United Nations S/2017/1001

Security Council

Distr.: General
29 November 2017

Original: English

Letter dated 29 November 2017 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council

I am pleased to transmit herewith the assessments of the President (see annex I) and of the Prosecutor (see annex II) of the International Tribunal for the Former Yugoslavia, pursuant to paragraph 6 of Security Council resolution 1534 (2004).

I should be grateful if you would transmit the present letter and its annexes to the members of the Security Council.

(*Signed*) Carmel **Agius**
President

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Annex I

Assessment and Report of Judge Carmel Agius, President of the International Tribunal for the Former Yugoslavia, provided to the Security Council pursuant to paragraph 6 of Security Council resolution 1534 (2004)

(18 May 2017 to 29 November 2017)

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I. Introduction

1. The present report, being the final report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, is submitted pursuant to Security Council resolution 1534 (2004), adopted on 26 March 2004, in paragraph 6 of which the Council requested the Tribunal to provide to the Council, by 31 May 2004 and every six months thereafter, assessments by its President and Prosecutor, setting out in detail the progress made towards implementation of the completion strategy of the Tribunal, explaining what measures have been taken.[1] With only four weeks until the Tribunal's closure, this final report signifies a true milestone in international criminal justice, namely the completion of all of the Tribunal's judicial work as at the date of the report, the imminent conclusion of all remaining operations and what will soon represent the ultimate fulfilment of its completion strategy.

2. For these reasons, in addition to providing a summary of the activities undertaken and efforts made during the reporting period, the final report of the Tribunal also: (a) outlines the origins and development of the completion strategy; (b) provides an overview of the broader implementation of the completion strategy by both Chambers and the Registry; and (c) thereby sets out the major challenges faced by these organs as well as significant achievements made over more than 24 years of operations and highlights key lessons learned and best practices. The Tribunal trusts that this information may be of use to, inter alia, the United Nations, as well as to other courts and tribunals, current and future.

II. Summary of activities during the reporting period

3. During the final reporting period, the Tribunal has done everything within its power to ensure the successful conclusion of its mandate in 2017. The Tribunal confirms that it will close on 31 December, in line with its resolute commitment to the Security Council.

A. Chambers

4. As at the date of the present report, the Tribunal has delivered judgments in the two final substantive cases and completed all other judicial work. It has thus managed to achieve what at times appeared to be impossible, given the overwhelming workload and continued drain of staff. In order to achieve these results, the Tribunal in recent months redoubled its efforts across all sections to ensure that its judicial work was completed by the previously forecast dates, that all residual functions were transferred to the International Residual Mechanism for Criminal Tribunals and that all

[1] The present report should be read in conjunction with the previous 27 reports submitted pursuant to Security Council resolution 1534 (2004): S/2004/420 of 24 May 2004, S/2004/897 of 23 November 2004, S/2005/343 of 25 May 2005, S/2005/781 of 14 December 2005, S/2006/353 of 31 May 2006, S/2006/898 of 16 November 2006, S/2007/283 of 16 May 2007, S/2007/663 of 12 November 2007, S/2008/326 of 14 May 2008, S/2008/729 of 24 November 2008, S/2009/252 of 18 May 2009, S/2009/589 of 13 November 2009, S/2010/270 of 1 June 2010, S/2010/588 of 19 November 2010, S/2011/316 of 18 May 2011, S/2011/716 of 16 November 2011, S/2012/354 of 23 May 2012, S/2012/847 of 19 November 2012, S/2013/308 of 23 May 2013, S/2013/678 of 18 November 2013, S/2014/351 of 16 May 2014, S/2014/827 of 19 November 2014, S/2015/342 of 15 May 2015, S/2015/874 of 16 November 2015, S/2016/454 of 17 May 2016, S/2016/976 of 17 November 2016, and S/2017/436 of 17 May 2017. Except where otherwise noted, this report contains data accurate as at 29 November 2017.

liquidation efforts are concluded by 31 December 2017. Throughout, the Tribunal has continued to utilize measures designed to enhance efficiency and prevent delay, while at the same time undertaking further scheduled downsizing operations. The Tribunal has also taken advantage in the last six months of precious final opportunities to further discuss and cement its legacy.

5. At the close of the reporting period, the Tribunal is particularly pleased that judgments have now been issued in the final trial case of *Prosecutor v. Ratko Mladić* and the final appeal case of *Prosecutor v. Jadranko Prlić et al.*, as detailed below. Both judgments were pronounced in line with previous forecasts and the Tribunal's stated commitment to concluding the final cases on time and in an expeditious manner, bearing in mind the fundamental importance of the principles of fairness and due process. Their delivery reflects the determination and exceptionally hard work of the Tribunal's judges and Chambers staff and indicates the Tribunal's continued efforts to maintain and improve efficiency until all work is completed. With these two judgments, the Tribunal has now concluded proceedings against all 161 of the individuals that it indicted for serious violations of international humanitarian law. The Tribunal has also concluded contempt proceedings against 25 persons, and has now transferred the remaining contempt case of *Prosecutor v. Petar Jojić and Vjerica Radeta* to the Mechanism, as outlined further below.

6. In the *Mladić* case, Trial Chamber I of the Tribunal, composed of Judges Alphons Orie (presiding), Christoph Flügge, and Bakone Justice Moloto, delivered its judgment on 22 November 2017, finding the accused Ratko Mladić guilty of 10 of the 11 counts charged. Mladić was found guilty of genocide in Srebrenica; crimes against humanity, including persecution, murder, extermination, deportation and the inhumane act of forcible transfer; as well as violations of the laws or customs of war, including murder, terror, unlawful attacks on civilians and the taking of hostages. The crimes were committed in Bosnia and Herzegovina between 12 May 1992 and 30 November 1995. Mladić was acquitted on the charge of genocide in six municipalities in Bosnia and Herzegovina in 1992. He was sentenced to life imprisonment.

7. The trial in the *Mladić* case commenced on 16 May 2012 and the evidentiary phase of the case was concluded in August 2016, with the parties subsequently presenting their closing arguments in December 2016. The total number of witnesses in the *Mladić* case was 592, with 377 having appeared before the Trial Chamber, and a total of 9,914 exhibits were admitted into evidence.

8. In the *Prlić et al.* case, the Appeals Chamber, composed of Judges Carmel Agius (presiding), Liu Daqun, Fausto Pocar, Theodor Meron, and Bakone Justice Moloto, pronounced its judgment on 29 November 2017, being the date of the present report. The Appeals Chamber affirmed almost all of the Trial Chamber's convictions of Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić. The Appeals Chamber also affirmed the sentences imposed by the Trial Chamber.

9. The Tribunal regrets to report that, during the public pronouncement of the appeal judgment, and following confirmation by the Appeals Chamber of Slobodan Praljak's convictions and sentence of 20 years' imprisonment, Mr. Praljak drank a liquid in court and shortly thereafter fell ill. The sitting was immediately suspended so that Mr. Praljak could be assisted by the Tribunal medical staff, who were on site, and an ambulance was called; Netherlands medical personnel arrived soon afterwards. Mr. Praljak was transported to a nearby hospital to receive further medical assistance. The sitting was later resumed in a different courtroom, where the pronouncement of the judgment in respect of the remaining appellants was concluded. At the request of the Tribunal, the Netherlands authorities immediately initiated an independent

investigation, which is ongoing, and later notified the Tribunal that Mr. Praljak had died.

10. As previously reported, the *Prlić et al.* case was the most voluminous appellate case in the history of the Tribunal, with seven appeals, over 500 combined grounds and sub-grounds of appeal, and 12,196 pages of appellate submissions dealing with a trial judgment of more than 2,000 pages. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić had been convicted by Trial Chamber III of the Tribunal, in a judgment rendered on 29 May 2013, of crimes against humanity, violations of the laws or customs of war and grave breaches of the Geneva Conventions, with respect to events occurring between 1992 and 1994 in eight municipalities and five detention camps in the territory of Bosnia and Herzegovina. All six accused, as well as the Office of the Prosecutor, lodged appeals against the trial judgment. The appeal briefing in the *Prlić et al.* case was completed on 29 May 2015, and the appeal hearing took place from 20 to 28 March 2017.

11. It should be noted that the above-mentioned judgments were finalized and delivered despite the considerable challenges posed by continuing staff attrition. During the reporting period, highly qualified staff members, including six legal officers assigned to the *Mladić* case and six legal officers assigned to assist the judges on the *Prlić et al.* case, continued to leave Chambers to take up more secure or longer-term opportunities with other employers. Losing core staff members who were familiar with these voluminous and complex proceedings necessarily increased the already immense workload of the remaining staff. As the required case knowledge and appeal experience of the separated staff could not be replaced by the employment of new staff at the late stages of the judgment drafting process, it is thanks only to the rapid reassignment of tasks and the exceptional efforts and dedication of the staff members who committed to stay until the very end that the *Mladić* case and *Prlić et al.* case were completed on time.

12. While the Tribunal will close with no outstanding fugitives charged with serious violations of international humanitarian law, it regrets to report that, in the contempt case of *Prosecutor v. Petar Jojić and Vjerica Radeta*, the accused remain at large owing to the failure of the Republic of Serbia to secure their arrest and transfer and to cooperate with the Tribunal pursuant to its obligations under article 29 of the statute of the Tribunal.

13. In the *Jojić and Radeta* case, the accused were charged with three counts of contempt of court in relation to alleged witness intimidation in the former trial case of *Prosecutor v. Vojislav Šešelj*. Proceedings against another accused, Jovo Ostojić, were terminated on 17 August 2017 following Ostojić's death. The proceedings in this contempt case commenced on 30 October 2012 with the issuance of an order in lieu of indictment, but remained confidential until 1 December 2015. Arrest warrants have been pending execution in Serbia since 19 January 2015 — now almost three years ago — and yet Serbia has taken no action. On 5 October 2016, international arrest warrants for the accused were issued confidentially by the Trial Chamber and were released in public or public redacted form on 29 November 2016. Subsequently, the International Criminal Police Organization (INTERPOL) issued Red Notices seeking the location and arrest of the accused, effective 16 March 2017. On 2 November 2017, Trial Chamber I, referencing the imminent closure of the Tribunal, returned the case to the President for further action. On 29 November 2017, the President transferred the *Jojić and Radeta* case to the Mechanism.

B. Registry

14. During the reporting period, all Registry sections have focused on: providing judicial support to enable the timely completion of the last substantive two cases before the International Tribunal for the Former Yugoslavia, the *Mladić* case and the *Prlić et al.* case; preparing for the closure of the institution and handover of remaining functions and records to the International Residual Mechanism for Criminal Tribunals; and assisting in the organization of activities recognizing and commemorating the legacy of the Tribunal.

15. Under the leadership of the Registrar and the immediate Office of the Registrar, the Division of Judicial Support Services has continued to support the Chambers and the parties to the Tribunal's proceedings. During the reporting period, the Registry supported the *Mladić* case in trial and the *Prlić et al.* case on appeal, involving a total of seven accused persons. The Registry also supported the *Jojić and Radeta* case at the pretrial stage, involving two accused persons who were never arrested or transferred to the Tribunal.

16. Within the Court Support Services Section, the Victims and Witnesses Section has complied with two judicial orders to consult protected witnesses regarding requests for the variation of their protective measures, and the Office of Legal Aid and Defence Matters has supported seven defence teams and an amicus curiae team, with a total of 35 defence team members. The Judicial Records Unit has processed and disseminated 231 filings, amounting to 7,426 pages. During the reporting period, the United Nations Detention Unit has been responsible for the seven accused/appellants in the Tribunal's final trial and appeal cases. Its medical service continued to monitor the detainees' health and to provide the necessary treatment. The Detention Unit has also facilitated a visit by the International Committee of the Red Cross to the Tribunal, as well as visits by independent medical experts. In addition, it facilitated 133 days of visits by family members and friends to the detainees, as well as visits by defence counsel.

17. During this final reporting period, and until the end of the Tribunal's operations in December, the Conference and Language Services Section will have provided 20 conference interpreter days and translated approximately 6,000 pages. This includes a number of judgments, notably the Bosnian/Croatian/Serbian version of the appeal judgment in the case of *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, which was issued by the Appeals Chamber on 30 June 2016. The Section also continued to support Tribunal operations in the run-up to its closure, including with regard to the organization of events marking that occasion. In recognition of the successful work performed by the Section, in September 2017 the German Federal Association of Interpreters and Translators awarded the Section its annual Hieronymus Prize for outstanding achievements in multilingual communication competency.

18. The Tribunal is also proud to report that, at a ceremony this month in the Great Hall of Justice in The Hague, President Agius accepted the first ever Justice Administration Excellence Award on behalf of the Tribunal, for its services in court management and justice administration.

19. In accordance with its liquidation plan, the Liquidation Task Force has continued to meet regularly to guide the timely end of the Tribunal's operations and the appropriate handover of residual activities to the Mechanism. Thanks to the work of the Administration, the Tribunal remains on track with these activities. On 1 January 2017, the Tribunal had 269 posts, including both regular posts and general temporary assistance positions. During the reporting period, the Tribunal abolished 80 of these posts, with another 73 to be abolished on 30 November 2017 and those remaining to be abolished at close of business on 31 December 2017. At the end of

the previous reporting period, nearly 90 per cent of the Tribunal's assets had already been transferred to the Mechanism to support the work of the Mechanism's Hague branch. Of the remaining assets, half have now been written off and disposed of, and those remaining will be disposed of in line with the Tribunal's asset disposal project plan. All ongoing contracts required by the Mechanism have been transferred, and all other remaining Tribunal contracts will expire and not be renewed by the end of the year.

20. Under the supervision of the Tribunal's records and archives working group, all Tribunal offices continued to appraise and dispose of their records, preparing records for transfer to Mechanism offices or to the Mechanism Archives and Records Section, as appropriate, and destroying time-expired or transitory records. The Tribunal is on track to dispose of all records in time for its closure and, as at 31 October 2017, had disposed of 89.1 per cent of all physical records and 82.6 per cent of all digital records.

21. Through the Division of Administration, the Registry has continued to provide high-quality services to the Tribunal in the areas of security, human resources, general services, procurement, finance, budget and information technology. Just last month, the Tribunal celebrated United Nations Day as one of the four finalists for the prestigious Secretary-General's Award in the category "Achieving gender parity". The Tribunal is proud that it has achieved and exceeded equal representation of women among its staff since 2009, including at the higher-level positions, and that, only a month away from closure, 62 per cent of all Tribunal staff at the Professional and Director levels are women.

22. The Tribunal is also proud that, notwithstanding its impending closure and the resulting stress for the remaining staff members, in the United Nations Global Staff Satisfaction Survey 2017,[2] the Tribunal was among the top five organizations for being most ethical and operating with integrity; for providing an environment free from harassment or abuse of authority and treating people equally; for empowerment, respectful communication, and quality of internal communication; and for giving high priority to employee welfare and health and safety and work-life balance.

23. The Division of Administration provided support in coordinating responses to, and compliance with, the reports and recommendations of oversight bodies, namely the Board of Auditors and the Office of Internal Oversight Services (OIOS). In the last six months, the Division of Administration coordinated responses to four OIOS audits and accommodated two visits from the Board of Auditors. It also continued to provide administrative support to both branches of the Mechanism.

24. During the reporting period, the Communications Section continued to provide communications, press and social media support in respect of the Tribunal's judicial and other activities and to manage the Tribunal's outreach programme. Thanks to this support, the Tribunal has continued to strengthen its presence on digital communications platforms, such as the Tribunal website (550,000 page views during the reporting period); YouTube (with videos viewed nearly 400,000 times); Facebook (over 10,500 followers); and Twitter (nearly 9,000 followers). The Communications Section has also continued to work on the transition of the Tribunal website into a lasting online presentation which will provide a permanent digital repository for the Tribunal's legacy.

25. The final round of the youth outreach project, funded by the Ministry of Foreign Affairs of Finland, began with a "train the trainers" workshop for high school teachers in Croatia. Also during the reporting period, nearly 3,000 students and professionals visited the Tribunal as part of its visits programme. In addition, the latest outreach

[2] Available from www.unfsu.org/global-staff-survey-2017-results/, pp. 3, 18, 21, 24, 27 and 34.

documentary "Never justified: ICTY and the crime of torture" was screened in June 2017 at the WARM Festival in Sarajevo, which is dedicated to war reporting, war art and war memory, and brought together journalists, artists, historians, researchers and activists.

26. Both the Communications Section and its outreach programme have focused on ensuring that the work of the Tribunal continues to have lasting impact. Together with a planning committee comprising representatives of the President's Office, Registry, Office of the Prosecutor, and Association of Defence Counsel Practising before the International Courts and Tribunals, and under the overall leadership of the President, they continued to assist in the organization and facilitation of several legacy and closing events as part of the "ICTY legacy dialogues" series. These events included a legacy lecture series, various workshops and the three-day Legacy Dialogues Conference in Sarajevo in June 2017, at which more than 350 regional and international participants gathered to discuss key areas of the Tribunal's legacy. At the conclusion of the Conference, a series of conclusions and recommendations were adopted, which the Tribunal has since referred to the General Assembly and the Security Council through its final annual report.[3]

27. Remaining events in the "ICTY legacy dialogues" series include a commemoration in New York on 4 December 2017, an academic symposium in The Hague on 18 December 2017 and the Tribunal's formal closing ceremony on 21 December 2017. The Tribunal notes that its legacy and closing events are entirely funded by external donors, and in this respect wishes to sincerely thank those who have provided support, namely: Austria, the European Union, Finland, Germany, Italy, Malta, the Netherlands and Switzerland.

28. Finally, during this last reporting period, the Tribunal has continued its efforts to establish Tribunal information centres in the countries of the former Yugoslavia, pursuant to Security Council resolution 1966 (2010), with the Communications Section playing a key role. In particular, the Tribunal and the City of Sarajevo have together continued work on the establishment of the very first Tribunal information centre, to be located in the refurbished Sarajevo City Hall. Efforts are also under way to establish information centres in the Srebrenica-Potočari Memorial Centre, Bosnia and Herzegovina, in respect of which a memorandum of understanding has recently been signed, and in Zagreb. The Tribunal is most grateful to the relevant authorities in both Bosnia and Herzegovina and Croatia for their support and their commitment to this very important aspect of the Tribunal's legacy. It is also extremely pleased that, during the President's recent mission to Belgrade, representatives of the Government of the Republic of Serbia expressed interest and willingness with regard to establishing an information centre in Belgrade. The Tribunal will do all it can to advance these matters before its closure, and otherwise will entrust the establishment of the information centres to its successor body, the International Residual Mechanism for Criminal Tribunals.

III. Recalling the origins and development of the completion strategy

29. When the Tribunal was formally established by Security Council resolution 827 (1993),[4] it was clear that, as an ad hoc institution, it would be temporary in nature. Notably, at the time of the Tribunal's establishment, no formal consideration was given to issues relating to its completion. Given that this final report represents the

[3] A/72/266-S/2017/662.

[4] Security Council resolution 827 (1993), 25 May 1993, para. 2. See also resolution 808 (1993).

imminent closure and fulfilment of the completion strategy, the Tribunal considers it important to recall how the strategy was initiated and developed.

30. Completion strategies at the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda were initially developed as a result of the pressure on these tribunals — largely budgetary — to accelerate their conclusion. On 9 November 1998, the Advisory Committee on Administrative Budgetary Questions issued a report on the revised budget estimates for the International Tribunal for the Former Yugoslavia for 1998 and the proposed requirements for 1999.[5] As part of its report, the Advisory Committee recommended an expert review of the management and organizational structure of each organ of the Tribunal, in particular the Office of the Prosecutor and the Registry, and that the Secretary-General establish a group of independent experts to evaluate the operations and functioning of the Tribunal.[6]

31. On 18 December 1998, the General Assembly adopted resolution 53/212, requesting the Secretary-General to conduct a review of the effectiveness of the activities of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, in accordance with the recommendation of the Advisory Committee, and to report on the matter.[7] The Secretary-General subsequently conferred a mandate upon a group of experts, consisting of five experienced jurists, asking them to prepare an evaluation of the functioning and operation of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda with the objective of enhancing the efficient use of resources allocated to Tribunals.[8] The Secretary-General transmitted the Expert Group report to the General Assembly on 22 November 1999.[9]

32. In the Expert Group report, a number of recommendations were made to enhance the efficiency of the tribunals,[10] including, notably, the following: "as is consensus among judges of the International Tribunal for the Former Yugoslavia and International Criminal Tribunal for Rwanda, the major objectives of the Security Council would be fulfilled and the resolve of the international community demonstrated if civilian, military and paramilitary leaders were brought to the trial rather than minor perpetrators.[11] This consensus was in line with the then Prosecutor's publicly stated policy of wanting to focus on leadership cases,[12] notwithstanding the

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[5] A/53/651.

[6] Ibid., para. 65.

[7] General Assembly resolution 53/212.

[8] See identical letters dated 17 November 1999 from the Secretary-General addressed to the President of the General Assembly and to the Chairman of the Advisory Committee on Administrative and Budgetary Questions (A/54/634-S/2000/597), transmitting the report of the Expert Group to conduct a review of the effective operation and functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (Expert Group report), para. 4. The five experts were listed in paragraph 3 of the Expert Group report (in their then roles) as: Jerome Ackerman (United States of America), former President of the United Nations Administrative Tribunal; Justice Pedro R. David (Argentina), Judge of the Cámara Nacional de Casación Penal of Argentina; Justice Hassan B. Jallow (Gambia), Justice of the Supreme Court of the Gambia, former Attorney General and Minister of Justice; Justice K. Jayachandra Reddy (India), former Public Prosecutor, former Judge of the Supreme Court of India; and Patricio Ruedas (Spain), former Under-Secretary-General for Administration and Management of the United Nations.

[9] A/54/634-S/2000/597.

[10] Ibid., paras. 1–46. Many of these recommendations involved amending the Tribunal's Rules of Procedure and Evidence in order to speed up processes.

[11] Ibid., para. 14. See also para. 96.

[12] Ibid., para. 149. See statement by Carla Del Ponte, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia on the investigation and prosecution of crimes committed in

difficulty in arresting the leaders concerned.[13] In the report, hope was expressed that cases involving lower-level accused could be transferred to national jurisdictions, when those domestic courts were ready.[14]

33. In November 1999, the President, judges, Registrar and Chambers Legal Support Section began to consider ways to enable the International Tribunal for the Former Yugoslavia to accomplish its mission more effectively, in the light of its increased workload and the Expert Group report.[15] The Tribunal submitted its comments on the Expert Group report to the General Assembly on 27 April 2000.[16] In that document, the Tribunal Chambers, Registry and Office of the Prosecutor agreed with the recommendation in the Expert Group report that the Tribunal should focus on higher-level accused and allow national courts to handle the lower-ranked ones.[17]

34. On 14 September 2000, the Secretary-General forwarded a letter to the Security Council attaching a letter from the then President of the Tribunal, Claude Jorda, dated 12 May 2000, together with a report on the current state of the Tribunal prepared by the Tribunal's judges.[18] The judges' report was the first time that the Tribunal had attempted to make a projection into the future working from a critical assessment of its activity and the appraisal of the Group of Experts.[19] The judges estimated that the trials of first instance might not be completed for a significant amount of time.[20] In order to shorten the estimated time required to complete the Tribunal's work, they made three overall recommendations: (a) granting Senior Legal Officers certain administrative powers of pretrial judges,[21] (b) creating a pool of ad litem judges,[22] and (c) adding two new judges for the common Appeals Chamber of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.[23] This plan was unanimously adopted by the judges of the International Tribunal for the Former Yugoslavia at an extraordinary plenary meeting held on 18 April 2000.[24] While, at the time, the then Prosecutor had not yet studied the proposal, her Office had expressed general agreement with the assessment of the Tribunal's projected workload, support for a more dynamic pretrial process and a recognition of the need to increase the Tribunal's capacity to try cases.[25]

35. On 30 November 2000, the Security Council adopted resolution 1329 (2000), in which, inter alia: it considered the letter dated 12 May 2000 from the President of the

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Kosovo, press release, 29 September 1999, available from www.icty.org/en/press/statement-carla-del-ponte-prosecutor-international-criminal-tribunal-former-yugoslavia.

[13] See A/54/634-S/2000/597, para. 92.

[14] Ibid., para. 96.

[15] See annual report of 7 August 2000 (A/55/273-S/2000/777), summary, in which it is noted that in the reporting period a further 13 indicted persons had been arrested, bringing the number of accused in the United Nations Detention Unit to a total of 37.

[16] Comments on the report of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (A/54/850), 27 April 2000, annexes I and II.

[17] Ibid., paras. 64–67.

[18] Identical letters dated 7 September 2000 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council (A/55/382-S/2000/865), 14 September 2000, annex I and attachment.

[19] Ibid., attachment, para. 143.

[20] Ibid., attachment, para. 35, where it was estimated that the trials of those who remained at large might not be completed before 2007 and the trials of those who still had not been indicted might not be completed before the end of 2016.

[21] Ibid., attachment, paras. 97–99, 128–129 and 138.

[22] Ibid., attachment, paras. 106–107, 128–129 and 138.

[23] Ibid., attachment, paras. 139–142.

[24] Letter dated 12 May 2000 from the President of the Tribunal, p. 3.

[25] Ibid., p. 4.

Tribunal and the attached judges' report;[26] took note of the preference of the Tribunal (and of the International Criminal Tribunal for Rwanda) to prosecute civilian, military and paramilitary leaders rather than minor actors;[27] took note with appreciation of the efforts of the judges of the International Tribunal for the Former Yugoslavia in allowing the competent organs of the United Nations to begin to form a relatively exact idea of the length of the mandate of the Tribunal;[28] decided to establish a pool of ad litem judges in the International Tribunal for the Former Yugoslavia and to enlarge by two judges the membership of the joint Appeals Chamber of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda;[29] and requested the Secretary-General to submit to the Security Council, as soon as possible, a report containing an assessment and proposals regarding the date ending the temporal jurisdiction of the International Tribunal for the Former Yugoslavia.[30]

36. In his report dated 21 February 2001, the Secretary-General noted, inter alia, that: (a) neither the statute of the Tribunal nor the relevant Security Council resolutions specify a termination date for the Tribunal's temporal jurisdiction;[31] (b) that date was left for subsequent determination by the Council "upon the restoration of peace" in the former Yugoslavia;[32] (c) he was not in a position to make an assessment to the effect that peace had been restored to the former Yugoslavia, in the light of the Security Council's resolutions that the situation in the region still constituted a threat to international peace and security;[33] and (d) he was accordingly not in a position to recommend a date upon which the Tribunal's temporal jurisdiction should end.[34]

37. In a briefing before the Security Council held on 27 November 2001, both the President and Prosecutor spoke of the potential transfer of certain cases of lesser importance to national jurisdictions in the former Yugoslavia, once those jurisdictions had built up their judicial capacities.[35] The then Prosecutor, Carla Del Ponte, in particular, stated that her focus was on the leaders and the most serious crimes, and referred to the transfer of cases to the domestic courts of the former Yugoslavia as potentially forming part of an "exit strategy" for the Tribunal.[36] The Prosecutor went on to state that the Office of the Prosecutor still intended to complete all investigations by 2004.[37] At that meeting, the President also referred to the addition of the new ad litem judges as a means of speeding up trials, stating that the Tribunal might be able to complete trial proceedings by 2007–2008, as long as accused persons continued to be arrested and if the necessary resources were provided.[38]

38. In January 2002, the President, Prosecutor and Registrar established a working group to examine problems that might arise in referring certain cases to domestic

[26] Security Council resolution 1329 (2000), preambular paragraph 4.
[27] Ibid., p. 1.
[28] Ibid., second preambular paragraph.
[29] Ibid., paras. 1–3.
[30] Ibid., para. 6.
[31] Report of the Secretary-General pursuant to paragraph 6 of Security Council resolution 1329 (2000) (S/2001/154), paras. 3, 6–9.
[32] Ibid., para. 10.
[33] Ibid., paras. 11–15.
[34] Ibid., paras. 15 and 16.
[35] Security Council, 4429th meeting (S/PV.4429), pp. 5, 12.
[36] Ibid., p. 9. See also ibid., pp. 10–12.
[37] Ibid., pp. 10–12. See also statement by Madame Carla del Ponte, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, press release, 22 December 1999. Available from www.icty.org/en/press/statement-madame-carla-del-ponte-prosecutor-international-criminal-tribunal-former-yugoslavi-0.
[38] S/PV.4429, p. 4.

legal systems and, following meetings with members of the Office of the High Representative for Bosnia and Herzegovina in March and April 2002, prepared a report setting out a plan of action for the Tribunal.[39] On 23 April 2002, the judges of the Tribunal held an extraordinary plenary session to discuss, among other things, the completion strategy for the mandate of the Tribunal.[40] During the plenary, the Tribunal's judges reviewed the report jointly drafted by the President, Prosecutor and Registrar and agreed with the major directions set out therein.[41] On 10 June 2002, President Jorda sent a letter to the Secretary-General attaching the joint report, which was subsequently transmitted to the Security Council.[42] In submitting the joint report, which referred to the Tribunal's completion strategy,[43] the Tribunal presented the United Nations with a vision and set of proposals regarding its own conclusion.

39. The primary objective of the joint report was to provide a general overview of the status of the Tribunal and to present the Secretary-General and the members of the Security Council with avenues of thought regarding reforms to be undertaken for the implementation of a referral process.[44] In the joint report, it was explained that the Tribunal was undergoing the necessary reforms in order to complete: (a) all investigations by 2004;[45] (b) all first instance trials by 2008;[46] and, therefore, (c) all of its work by 2010.[47] In order to achieve these target dates, in the joint report a programme of action was proposed, whereby the Tribunal would focus on the prosecution of those crimes most prejudicial to the international public order[48] — i.e., the highest-level political, military and paramilitary leaders suspected of violations of international humanitarian law[49] — and refer certain cases to domestic jurisdictions. However, the need was also emphasized for State cooperation and for those jurisdictions first to have sufficient resources and to operate fairly and in accordance with international human rights law.[50] To that end, it was recommended in the joint report that a chamber within the State Court of Bosnia and Herzegovina be created with jurisdiction to try accused persons referred to it by the Tribunal.[51]

40. The Security Council, in a presidential statement of 23 July 2002, welcomed the joint report, and endorsed the Tribunal's broad strategy for the transfer of cases involving intermediary and lower-level accused to competent national jurisdictions as likely to be, in practice, the best way of allowing the Tribunal to achieve its current objective of completing all trial activities at first instance by 2008.[52] In its annual report of 4 September 2002, the Tribunal set out its joint programme of action for the three organs of the Tribunal to coordinate in winding down its mission,[53] as contained

[39] See report on the judicial status of the International Criminal Tribunal for the Former Yugoslavia and the prospects for referring certain cases to national courts (S/2002/678, enclosure, para. 6).
[40] See press release, 24 April 2002. Available from www.icty.org/en/press/extraordinary-plenary-session-tuesday-23-april-2002.
[41] S/2002/678, enclosure, para. 6.
[42] Ibid., annex and enclosure.
[43] See, e.g., ibid., enclosure, para. 8.
[44] Ibid., annex, p. 1.
[45] Ibid., enclosure, paras. 1 and 83.
[46] Ibid., paras. 1, 5, 75 and 83.
[47] Ibid., para. 75.
[48] Ibid., enclosure, para. 4.
[49] Ibid., enclosure, paras. 11 and 31. See also letter dated 17 June 2002 from the Secretary-General addressed to the President of the Security Council (ibid., p. 1).
[50] Ibid., enclosure, paras. 4, 14–15, 70–73, 77 and 84.
[51] Ibid., enclosure, para. 85.
[52] Statement by the President of the Security Council (S/PRST/2002/21), 23 July 2002.
[53] Annual report of 4 September 2002 (A/57/379-S/2002/985), p. 10.

in the joint report, and summarized the reforms and actions already undertaken as part of the completion strategy.[54]

41. Subsequently, on 28 August 2003, the Security Council adopted resolution 1503 (2003), which reaffirmed the 23 July 2002 presidential statement of support, and officially endorsed the Tribunal's completion strategy.[55] In that resolution it also, inter alia: (a) called on the international community to assist national jurisdictions to prosecute cases transferred from the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, as well as on those tribunals to develop and improve their respective outreach programmes;[56] (b) called on all States to intensify cooperation with the International Tribunal for the Former Yugoslavia;[57] (c) called on the donor community to support Bosnia and Herzegovina in creating a special chamber within its State Court, in order to prosecute suspected war criminals;[58] and (d) called on both the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda to take all possible measures to complete investigations in 2004, all trials at first instance in 2008, and to conclude all their work in 2010.[59]

42. It should be noted that the then President of the International Tribunal for the Former Yugoslavia, Theodor Meron, in a briefing before the Security Council on 9 October 2003, emphasized that, while the Tribunal was striving to meet the goals of completing all trials by the end of 2008 and all appeals by the end of 2010,[60] it was nevertheless difficult to predict the completion date of judicial proceedings, as many factors would affect the outcome, some of which were outside the Tribunal's control.[61] The President noted that trying all cases, including those involving fugitives at large, without any guilty pleas, would likely necessitate trials (rather than appeals) lasting until at least 2009.[62] Significantly, the President emphasized that strict application of the target dates for the completion strategy must not result in impunity, particularly for the most senior leaders suspected of being most responsible for the crimes within the Tribunal's jurisdiction.[63] The then Prosecutor, also invited to speak at the briefing, agreed with the President's estimates[64] and highlighted two issues essential for successful implementation of the completion strategy: (a) cooperation by the States of the former Yugoslavia (particularly by providing access to witnesses and documents, and arresting and transferring fugitives); and (b) reforming and supporting national courts of the former Yugoslavia to prosecute lower-level accused.[65]

43. The Security Council adopted resolution 1534 (2004) on 26 March 2004, in which, inter alia: it (a) emphasized "the importance of fully implementing the completion strategies, as set out in [...] resolution 1503 (2003)";[66] (b) called on the Tribunals to take all possible measures to abide by the above-mentioned dates

[54] See, e.g., ibid., pp. 3–5, 10–13, 35–36, 38 and 51.
[55] Security Council resolution 1503 (2003), para. 7.
[56] Ibid., para. 1.
[57] Ibid., para. 2.
[58] Ibid., para. 5.
[59] Ibid., para. 7.
[60] Security Council, 4838th meeting (S/PV.4838), p. 5.
[61] Ibid., p. 5.
[62] Ibid., p. 5.
[63] Ibid., p. 6.
[64] Ibid., p. 10.
[65] Ibid., pp. 11–13. The Prosecutor also stated the following: "Finally, I have to share my concern that the 2004 deadline set in the completion strategy, instead of speeding up cooperation, may well, on the contrary, encourage States in the region to buy time and to place additional obstacles in the way of cooperation with the ICTY." (Ibid., p. 12.)
[66] Security Council resolution 1534 (2004), para. 3.

(i.e., 2004, 2008 and 2010);[67] and (c) requested that the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda each report to the Security Council every six months on progress made towards implementing the completion strategies.[68] The Tribunal's first-ever completion strategy report was submitted soon afterwards.[69] On 4 August 2004, the Security Council issued a presidential statement reaffirming its support for both the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, and encouraging them "to undertake every effort to ensure that they remain on track to meet the target dates of the completion strategies".[70]

44. In the light of the foregoing, it is evident that the goal of the Tribunal's completion strategy initially consisted of taking all possible measures to meet the three target dates first suggested by the Tribunal in the joint report and subsequently endorsed by the Security Council: (a) completing all investigations by the end of 2004; (b) completing all trials at first instance by the end of 2008; and (c) completing all work in 2010. It can also be seen that main elements of the completion strategy, through which this goal was to be achieved, initially consisted of the following: (a) focusing the Tribunal's efforts on prosecuting the most senior leaders suspected of being most responsible for crimes within the Tribunal's jurisdiction; (b) referring appropriate cases (i.e., those involving intermediary and lower-level accused) to competent national authorities in the former Yugoslavia; (c) adopting measures to enable more efficient proceedings; and (d) reporting to the Security Council every six months on the Tribunal's progress in implementing the completion strategy. Several years later, a further element of the completion strategy was identified and began to be implemented by the Tribunal: namely, the transition of all residual functions to the International Residual Mechanism for Criminal Tribunals.[71] From 2009, the transition to the Mechanism became a core part of the Tribunal's completion strategy and its related reporting to the Security Council.[72]

45. The above summary indicates that the development of the Tribunal's completion strategy was, contrary to common misconceptions, largely a Tribunal-owned and judge-led process. The completion strategy thus demonstrates the Tribunal's conscientiousness, proactiveness and determination to find a workable process or plan by which to expedite and conclude its own operations.

46. It is also important to highlight that the time frames initially indicated for fulfilment of the completion strategy — namely, completion of all investigations by the end of 2004, all trials at first instance by the end of 2008, and all work in 2010 — were targets, rather than strict deadlines. The Tribunal always maintained that these targets could be achieved only if certain preconditions were in place and that the dates would be significantly impacted by factors outside the Tribunal's control, such as the apprehension of fugitives, the level of cooperation extended by States, and the readiness or otherwise of domestic legal systems to deal with certain categories of

[67] Ibid., para. 3.

[68] Ibid., para. 6.

[69] Completion strategy report of 24 May 2004 (S/2004/420).

[70] Statement by the President of the Security Council (S/PRST/2004/28), 4 August 2004, p. 1.

[71] See, e.g., completion strategy report of 16 May 2007 (S/2007/283 and S/2007/283/Corr.1), para. 34; report of the Secretary-General on the administrative and budgetary aspects of the options for possible locations for the archives of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and the seat of the residual mechanism(s) for the tribunals (S/2009/258), 21 May 2009, paras. 259 (l)–(m); and completion strategy report of 13 November 2009 (S/2009/589), para. 61. See also Security Council resolution 1966 (2010), 22 December 2010, annex I "Statute of the International Residual Mechanism for Criminal Tribunals", and annex II "Transitional Arrangements".

[72] See S/2009/589, paras. 61 and 62.

cases.[73] It was also made clear that adequate staffing of the Tribunal would be essential to the successful achievement of the completion strategy.[74] The Tribunal considers it important to bear this context in mind, given the various criticisms made in relation to the Tribunal's purported failure to meet the "deadlines" of the completion strategy. Indeed, in this respect, there seem to have been some misunderstandings as to the nature of the time frames within which the Tribunal operated. The Tribunal trusts that the above summary provides insights that may be useful in clarifying these issues and countering some of the negative perceptions.

47. Finally, the Tribunal wishes to underscore the difficulties it has faced as a result of not being given a finite time frame for its operations from the very beginning and the considerable efforts it has had to expend in developing and implementing its own completion strategy. It considers that future courts and tribunals would benefit from more predictability in this regard and should be encouraged and supported to develop a completion strategy from the outset. The Tribunal therefore urges the United Nations to bear this in mind as a major lesson learned.[75]

IV. Implementation of the completion strategy: Chambers

48. The present part of the report sets out how the Tribunal, and Chambers specifically, has implemented the completion strategy, with particular attention paid to the challenges faced and achievements made, as well as the resulting lessons learned and best practices developed.[76]

A. Challenges

49. The Tribunal has throughout its lifetime encountered challenges in the form of both external factors and internal circumstances. Of the external challenges, State cooperation, or most frequently the lack thereof, has had a direct effect on the Tribunal's effectiveness. It took six years for Dragan Nikolić, the first person indicted by the Tribunal, to be transferred into its custody, for example.[77] Further, the better part of two decades passed before all 161 accused were arrested and transferred to The Hague, with one of the main accused, Ratko Mladić, transferred only on 31 May 2011, following on from the "extremely late" arrest and transfer of Radovan Karadžić, in 2008,[78] and the final fugitive, Goran Hadžić, transferred on 22 July 2011.[79] It goes without saying that the work of Chambers has been directly impacted by such delays and that, as a result, numerous trials and appeals have commenced much later than could otherwise have been possible. There are many similar examples of ineffective State cooperation which has held up the Tribunal's work.

[73] See paras. 37–39 above; see also S/2004/420, paras. 7 and 8.

[74] See, e.g., S/2004/420, paras. 7 and 56–61, and paras. 91 and 97–102 below.

[75] See report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616) of 23 August 2004, para. 46, in which the then Secretary-General Kofi Annan stated: "It is essential that, from the moment any future international or hybrid tribunal is established, consideration be given, as a priority, to the ultimate exit strategy and intended legacy in the country concerned."

[76] For a full expose of the challenges encountered and measures taken, see the Tribunal's 24 annual reports and 27 previous completion strategy reports.

[77] Dragan Nikolic was indicted on 4 November 1994 and transferred to the Tribunal on 21 April 2000.

[78] See completion strategy report of 18 May 2009 (S/2009/252), para. 13.

[79] See completion strategy report of 16 November 2011 (S/2011/716), paras. 10 and 11, regarding the arrests and transfer of Ratko Mladić and Goran Hadžić, described later in the same report as a "milestone" (see para. 60) in the Tribunal's work.

50. In addition to being prevented from commencing certain trials (and thus also appeals) any sooner than State cooperation would allow, nor were the Tribunal's Chambers provided with all the tools that they needed to start work immediately. In this respect, it should be noted that, when it was established, the Tribunal was given a statute, but no rules of procedure and evidence with which to govern its proceedings and processes. These had to be developed by the judges themselves. Another early institutional challenge which is perhaps overlooked is that the Tribunal had no Prosecutor until 15 August 1994, almost 15 months after its establishment. Ramón Escovar Salom (Bolivarian Republic of Venezuela) was appointed as Prosecutor of the Tribunal in October 1993 and was due to take office in February 1994, but resigned before taking up the post. Deputy Prosecutor Graham Blewitt stepped in as temporary acting Prosecutor but it was not until July 1994 that Richard Goldstone (South Africa) was appointed Prosecutor by the Security Council, taking up office in August 1994.

51. A further challenging aspect to the Tribunal's work was that the crimes subject to its jurisdiction continued to be committed well after its creation. The Tribunal was established on 25 May 1993, while the war in Bosnia and Herzegovina was still raging, a conflict that would only end with the General Framework Agreement for Peace in Bosnia and Herzegovina and the annexes thereto on 14 December 1995. The Tribunal also investigated crimes committed in Kosovo while the conflict was ongoing there in 1998/1999, which resulted in, for instance, the *Milutinović et al.* mega-trial and the very complex *Haradinaj et al.* case. Moreover, the *Boškoski and Tarčulovski* case, the trial of which was conducted in 2007/2008, based on an indictment issued in 2005, concerned crimes committed in August 2001 in the former Yugoslav Republic of Macedonia. The fact that the Tribunal commenced and continued to operate during ongoing conflict has posed particular challenges for many aspects of its work, including investigations and witness protection.

52. All of these circumstances have necessarily hampered the Tribunal's ability to plan and predict its case work, with ripple effects throughout the organization in terms of, for instance, budget and staffing. Since many cases concern the same or related criminal conduct, it is certain that more cases could have been joined and tried together had the relevant States promptly arrested and transferred the accused.[80] Not only has this caused needless expenditure, crucially, it has resulted in unnecessary and considerable delay of justice for the victims.

53. Delays in ongoing trial and appeal proceedings have most frequently occurred due to factors beyond the Tribunal's control, for instance the death of counsel, the failure of witnesses to appear, witness intimidation, numerous contempt proceedings,

[80] In S/2009/252, para. 13, the Tribunal noted that, if Vlastimir Đorđević had been transferred earlier to the custody of the Tribunal, he could have been tried with his co-accused in the *Milutinović et al.* case, as opposed to being tried alone. In its completion strategy report of 14 May 2008 (S/2008/326), para. 8, the Tribunal noted a similar situation with regard to Zdravko Tolimir, who had also been indicted in a multi-accused case that commenced months before his arrest.

the health of accused,[81] the need to assign counsel to self-represented accused,[82] and other complexities associated with self-represented accused.[83] Naturally, delays during the trial phase of a case will affect the completion of any appeals phase. The unpredictability of trials and appeals is also shown by the ordering of retrials.[84]

54. Another significant challenge, which deserves particular attention, is staff attrition, the effects of which have been felt continuously in the organization for some 15 years. It is beyond doubt that the high turnover of staff, and in particular Chambers legal staff, has impacted negatively upon the effectiveness of the Tribunal's proceedings.[85] These issues are dealt with in more detail below.[86]

55. As a result of the difficulties the Tribunal has faced, it has since very early on monitored its operating methods with a view to finding better and more efficient ways of carrying out its tasks. This self-awareness and desire to continuously improve may be considered two of the main strengths of the Tribunal and have allowed it to become more and more effective over time — for instance by adjusting its structure and operating methods and by using any flexibility that exists in governance documents, such as United Nations staffing and recruitment rules, in order to meet challenges.

56. The Tribunal has not been without criticism in how it has dealt with many challenges. It has, for example, been criticized for "slippage" in case projections, and generally for taking too long and costing too much. There is merit to this criticism insofar as it suggests that justice ought to have come sooner. However, to say that the Tribunal has not operated effectively would be a mischaracterization.[87] Trial and appellate work is notoriously difficult to predict in view of the dynamic nature of criminal proceedings. Justice cannot be "scripted", nor should it be. Add to this the magnitude and complexity of the cases heard by the Tribunal, and the difficulty in

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[81] Several cases have been delayed, to a greater or lesser extent, by the health of the accused. See, for instance, annual report of 16 August 2004 (A/59/215-S/2004/627), para. 124, and annual report of 17 August 2005 (A/60/267-S/2005/532 and A/60/267-S/2005/532/Corr.1), para. 82 (in which it is noted that the case against Slobodan Milošević had been delayed on several occasions owing to the poor health of the accused); S/2008/326, para. 14 (in which it is noted that the schedule in the *Delić* case was changed to sitting four days a week instead of five owing to the health of the accused); S/2009/252, para. 16 (in which it is noted that the commencement and progress of the *Stanišić and Simatović* trial had been significantly delayed due to the poor health of Jovica Stanišić); S/2009/589, para. 21 (in which it is noted that the poor health of several of the accused in the *Prlić et al.* case had led to delays); completion strategy report of 23 May 2013 (S/2013/308), para. 45 (in which it is noted that Milan Gvero's health initially precluded his participation during the appeal proceedings in *Popović et al.*); S/2012/354, para. 19 (in which it is noted that the schedule in the *Šešelj* trial was affected by health concerns regarding the accused); completion strategy report of 17 November 2016 (S/2016/976), para. 15 (in which it is noted that owing to serious problems with Mr. Hadžić's health, the trial was interrupted and no hearings in this case were held after 20 October 2014 and that the accused died on 12 July 2016).

[82] S/2009/589, para. 5.

[83] Completion strategy report of 1 June 2010 (S/2010/270), para. 8.

[84] Two retrials have been ordered by the Appeals Chamber, in the *Haradinaj et al.* and *Stanišić and Simatović* cases. The former case was returned to the pretrial stage following the Appeals Chamber's decision to grant the prosecution's request for a partial retrial and was subsequently heard by the Tribunal. The latter case is currently being heard by the Mechanism. See, for instance, completion strategy report of 19 November 2010 (S/2010/588, paras. 3 and 13).

[85] See paras. 97–100 below.

[86] See paras. 97–103 below.

[87] See for example the below overview of numbers of trial judgments (TJ) and appeal judgments (AJ) issued per year, including judgments following guilty pleas but excluding contempt judgments: 1996: 1 TJ; 1997: 1 TJ, 1 AJ; 1998: 1 TJ; 1999: 3 TJ, 1 AJ; 2000: 2 TJ, 3 AJ; 2001: 7 TJ, 3 AJ; 2002: 3 TJ; 2003: 9 TJ, 2 AJ; 2004: 6 TJ; 2005: 5 TJ, 5 AJ; 2006: 4 TJ, 5 AJ; 2007: 4 TJ, 6 AJ; 2008: 3 TJ, 4 AJ; 2009: 2 TJ, 3 AJ; 2010: 1 TJ, 3 AJ; 2011: 3 TJ; 2012: 2 TJ, 2 AJ; 2013: 3 TJ, 1 AJ; 2014: 2 AJ; 2015: 3 AJ; 2016: 2 TJ, 1 AJ; 2017: 1 TJ, 1 AJ.

predicting case lengths increases.[88] As was stated in a previous completion strategy report, estimation of trial and appeal duration is more art than science; it is not like creating a bus schedule.[89] This simple truth is often lost in assessments of the Tribunal's effectiveness, as is the fact that the Tribunal's administration of justice must, at all times, respect the dictates of both fairness and expeditiousness, the two fundamental tenets of criminal justice.

B. Achievements

57. While the present section focuses mainly on challenges, and what the Tribunal as the first true international criminal jurisdiction has learned from them, its substantive legal achievements must not be forgotten.

58. Through its active judicial work and interpretation of the existing law, the Tribunal has extended much of the legal protection that applies in international armed conflicts to non-international armed conflicts, having found that the protection has a basis in customary international law. The Tribunal has also provided a definition of "armed conflict", a term which, although widely used in international humanitarian law and other legal instruments, had never been defined.[90] The Tribunal's pronouncements have illuminated the legal protection afforded to the most vulnerable in any conflict, the victims, by such important findings as defining crucial elements of the crime of genocide, in particular with respect to the targeted group,[91] and finding that enslavement is a crime against humanity under customary international law and that the prohibition against slavery is customary in nature.[92] Furthermore, and crucially, the Tribunal has established that rape may be prosecuted as a grave breach of the Geneva Conventions and as a violation of the laws and customs of war,[93] that rape may constitute torture[94] and that sexual enslavement can constitute enslavement as a crime against humanity.[95] The Tribunal has, since its earliest cases, dealt with allegations of sexual violence in the knowledge that such crimes are one of the very worst scourges of war and have a devastating effect on their victims.[96] The Tribunal

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[88] As stated by former President Judge Theodor Meron, "at the most basic level, the criminal cases tried before the Tribunals are unprecedented in scope and scale, and involve crimes almost never prosecuted on a national level, such as genocide. ... dozens of crime sites, thousands of victims, and enormous volumes of written material". Theodor Meron, *The Making of International Criminal Justice: A View from the Bench — Selected Speeches* (Oxford University Press, 2011), p. 280, 283.

[89] See S/2010/270, para. 8, in which it is also noted that: "The forecasts made by the Trial and Appeals Chambers are based on an assessment of a number of factors that are considered to be within their control, such as the time allocated to the parties to present their cases, the number of witnesses permitted to be called, and the scope of the indictment. In most cases, there has been slippage in the trial and appeal schedule, resulting from unforeseen factors not immediately within the Tribunal's control, including witness intimidation, failure of witnesses to appear, illness of accused, the complexities associated with self-represented accused, and staff attrition. In a couple of cases, as the trials progressed, it became apparent to the Trial Chambers that the estimates made by the pretrial judge were based on inadequate information provided by the parties. It was only as the Trial Chambers received more information from the parties regarding the scope of their cases that more accurate assessments could be made."

[90] *Prosecutor* v. *Duško Tadić*, case No. IT-94-1-T, Decision on the defence motion for interlocutory appeal on jurisdiction, 2 October 1995, para. 70.

[91] See, for instance, *Prosecutor* v. *Radislav Krstić*, case No. IT-98-33-A, judgment, 19 April 2004, para. 8.

[92] *Prosecutor* v. *Kunarac et al.*, case No. IT-96-23-T and IT-96-23/1-T, judgment, 22 February 2001, paras. 515–543 ("*Kunarac et al.* judgment"); *Prosecutor* v. *Milorad Krnojelac*, case No. IT-97-25-T, judgment, 15 March 2002, para. 353.

[93] *Prosecutor* v. *Anto Furundžija*, case No. IT-95-17/1-T, judgment, para. 172.

[94] *Prosecutor* v. *Mucić et al.*, case No. IT-96-21-T, judgment, 16 November 1998, paras. 470–497.

[95] *Kunarac et al.* judgment, paras. 539–543.

[96] Allegations of crimes of sexual violence have been heard in many cases before the Tribunal.

has also contributed to the definition and understanding of other international crimes, including for example by affirming that the destruction of cultural heritage may amount to a crime against humanity.[97]

59. With respect to criminal responsibility, the Tribunal has shown beyond doubt that not even heads of State are beyond the reach of the law, as the first court ever to indict a sitting president. It has proved that certain modes of liability, such as aiding and abetting and joint criminal enterprise, are particularly well suited to addressing the criminal responsibility of persons in high positions of political and military power. The Tribunal's significant contribution to the development and understanding of superior or command responsibility as a mode of liability must also be noted. It found, for instance, that a formal superior-subordinate relationship is not required for criminal liability to arise, but rather that the important threshold is that a person, whether a military, police or paramilitary commander, or a civilian leader such as a politician, exercised effective control.[98] The impact and value of the Tribunal's work and jurisprudence is evident in the myriad references to its pronouncements by numerous organizations and institutions, from the International Committee of the Red Cross to other international courts, as well as in States' military manuals.[99]

60. Procedurally, too, the Tribunal has paved the way for other courts and tribunals through its development of an entire body of rules of procedure and evidence, as well as practice directions, governing all aspects of proceedings. Further, unlike at other courts that have followed, the Rules of Procedure and Evidence of the Tribunal were developed and amended over the years by the judges themselves, allowing them to respond as needs arose. The Tribunal's procedural experience in streamlining its proceedings and running complex, multi-accused cases have contributed to the creation and shaping of other international criminal jurisdictions, notably the International Criminal Court.[100]

61. Relevant in this context also is the Tribunal's fact-finding work and its role in establishing an historical record in respect of the conflicts of the 1990s. While not part of its official mandate, its contributions in this respect are noteworthy. Not only has the Tribunal established beyond reasonable doubt countless facts in relation to crimes that were once subject to dispute, every trial and appeal judgment of the Tribunal has set out facts regarding, for example, the relevant historical background and political developments, the modus operandi of military, police and paramilitary

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including *Furundžija*, *Tadić*, *Mucić et al*, *Kupreškić et al*, *Blaškić*, *Kunarac et al*, *Kordić and Čerkez*, *Todorović*, *Krstić*, *Kvočka et al*, *Sikirica et al*, *Simić*, *Plavšić*, *Stakić*, *Češić*, *Brđanin*, *Blagojević and Jokić*, *Bralo*, *Rajić*, *Krajišnik*, *Martić*, *Haradinaj et al*, *Milutinović et al*, *Lukić and Lukić*, *Popović et al*, *Đorđević*, *Gotovina et al*, *Stanišić and Župljanin*, *Prlić et al*, *Stanišić and Simatović* and *Karadžić*.

[97] See *Prosecutor v. Tihomir Blaškić*, case No. IT-95-14-A, judgment, 29 July 2004, para. 149. See also *Prosecutor v. Đorđević*, case No. IT-05-87/1-A, judgment, 27 January 2014, paras. 553–554 and 563–568.

[98] *Prosecutor v. Delalić et al.*, case No. IT-96-21-A, judgment, 20 February 2001, para. 256.

[99] In addition to reference by organizations such as the International Committee of the Red Cross, international courts which have referred to the Tribunal's pronouncements in their own judgments and decisions include the International Court of Justice, the International Criminal Court, the Special Tribunal for Lebanon, the Extraordinary Chambers in the Courts of Cambodia and the Special Court for Sierra Leone. The statute of the Special Court for Sierra Leone provides in article 20 (3) that the judges of its Appeals Chamber "shall be guided by the decisions of the Appeals Chamber of the International Tribunals for the former Yugoslavia and for Rwanda". In military manuals, States often refer to the Tribunal's jurisprudence, see for instance the German Law of Armed Conflict Manual (ZDv 15/2, 2013), the United Kingdom Joint Service Manual of the Law of Armed Conflict (JSP 383, 2004) and the United States Department of Defence Law of War Manual (June 2015).

[100] The Tribunal's substantive and procedural jurisprudence is available online free of charge through the Case Law Database. See also para. 64 below.

forces, and the acts and conduct of the accused and persons subordinate to them. In addition to the evidence presented in court, admissions of guilt from a number of accused have also greatly contributed to the establishment of the facts. The Tribunal's creation of an historical record is a key part of its legacy that will stand the test of time and continue to assist in combating denial and revisionism in the region of the former Yugoslavia.

62. Ultimately, while the Tribunal has not been able to provide justice to victims as fast as the international community, or indeed the Tribunal itself, would have wished, it has forged a new era of accountability, demonstrating that the concept of impunity no longer prevails and that even the most senior military and political leaders may be held to account.[101] This is perhaps the Tribunal's greatest achievement of all and thus its most fundamental legacy.

C. Lessons learned and best practices

63. Turning to the question of lessons learned and best practices, it is a fact that such lessons and practices are worthless if they are not recorded, accessible and put to use in future endeavours.

64. Through the creation of the Mechanism, the Security Council has established an institution which will act as caretaker of the Tribunal's archives. These archives will contain the sum total of the institutional knowledge accumulated across the Tribunal's organs, divisions and sections, and will be an important repository of information. With respect to the Tribunal's judicial work, the Case Law Database and Court Records Database, both of which are available online free of charge, will be particularly useful to the general public, including students and scholars.[102] In this vein too, the Tribunal's Manual on Developed Practices, which was drawn up in cooperation with the United Nations Interregional Crime and Justice Research Institute in 2009, continues to contribute to the preservation of the Tribunal's legacy and provides a comprehensive description and inside view of its operating methods.[103] Further, the many annual reports and biannual completion strategy reports, as well as speeches by the principals of the Tribunal, whether in United Nations forums or elsewhere, will also provide useful explanations as to how the Tribunal has adjusted its operations over the years in order to deal with the challenges it has encountered. Similarly, the wealth of material resulting from the Tribunal's outreach and capacity-building activities in its many fields of operation will continue to serve as a cross-organizational reference regarding the institution's work, and the Tribunal information centres will constitute an extremely valuable ongoing resource. Finally, the lessons learned and best practices that have been developed are also carried forward personally by the many judges, staff members and interns who have served international criminal justice at this important institution, many of whom will continue to do so in other institutions.

65. However, ultimately it will be for the United Nations and its Member States, as well as other international courts and tribunals and the peoples and countries of the

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[101] As noted by President Agius in his address to the Security Council on 8 June 2016: "Our joint efforts to bring to justice those who committed the most atrocious crimes in the former Yugoslavia send a powerful message to the world. Even though more than two decades have passed, and even though it has been a time-consuming and laborious process, we must and we will continue to fight against the culture of impunity and for accountability and justice." Security Council, 7707th meeting (S/PV.7707), 8 June 2006, p. 6.

[102] The Case Law Database is available from http://cld.unmict.org and the Court Records Database at http://icr.icty.org.

[103] Annual report of 31 July 2009 (A/64/205-S/2009/394), para. 9.

former Yugoslavia, to learn — and, more importantly, to be willing to learn — from the challenges and experience of the Tribunal.

66. The lessons learned and best practices from the Chambers perspective can be categorized under the following headings: case management, referrals, working groups, staff, structure and courtrooms.

1. Case management

67. The efficiency-related adjustments carried out over the course of the Tribunal's existence have typically taken the form of amendments to the Rules and other procedural documents, such as practice directions, changes to internal working methods and procedures in Chambers, and the use of digital systems.[104]

68. On 6 April 2004, and in accordance with paragraph 5 of Security Council resolution 1534 (2004) which confirmed the completion strategy, rule 28 (A) of the Rules was amended to ensure that all indictments confirmed by the Tribunal met the Security Council's directive that the indictments concentrate, prima facie, on one or more of the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the Tribunal.[105]

69. Accused have been tried in joint cases to the extent possible since the start of the Tribunal, with the effect that judicial resources have been used as effectively as possible while ensuring that proceedings are conducted expeditiously and fairly.[106] The Tribunal has heard and concluded a total of 61 cases (excluding contempt proceedings), ranging from 40 single-accused cases, to 8 two-accused cases, 7 three-accused cases,[107] 1 four-accused case, 1 five-accused case, 3 six-accused cases and 1 seven-accused case.[108] As a result, proceedings have been conducted more efficiently than if each accused had been tried separately.

70. With respect to pretrial management, a cornerstone for efficient and well-run trial proceedings, pretrial judges have over the years taken an active role and, inter alia, ruled on the admissibility of adjudicated facts and documentary evidence from other proceedings under rule 94 (B) of the Rules, thus expediting otherwise time-consuming evidentiary matters. Coupled with a policy to, as far as possible, have the pretrial judge sit on the bench that will hear the case at trial, this ensured greater familiarity with the substance of the case when trial begins. Related to this, rule 65 ter of the Rules was amended early on to allow Chambers' Senior Legal Officers to assist the pretrial judge in facilitating implementation of the workplan according to which

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[104] In addition to the following discussion, see also S/2016/976, paras. 34–53, for a summary of some of the efficiency measures undertaken throughout the Tribunal's lifetime. This summary was provided in response to an OIOS evaluation carried out earlier in 2016 with respect to the work and methods of the Tribunal; see S/2016/976, paras. 26–33.

[105] A/59/215-S/2004/627, p. 3, paras. 8–9; completion strategy report of 24 May 2004 (S/2005/343 and S/2005/343/Corr.1), paras. 31–33.

[106] Annual report of 21 August 2006 (A/61/271-S/2006/666), para. 11, in which it is noted that, in April and July 2006, three trials, involving a total of 21 accused and consolidating 14 cases, began, and that the commencement of these trials was greatly accelerated by the implementation of the reforms recommended by the Working Group on Speeding Up Trials. See also completion strategy report of 14 December 2005 (S/2005/781, para. 19); S/2009/252, para. 15; and S/2010/270, para. 44.

[107] Included here are the accused in the *Sikirica et al.* trial (Duško Sikirica, Damir Došen and Dragan Kolundžija), who all pleaded guilty, because their pleas were received at the very end of the trial.

[108] Actual cases heard by the Tribunal, including those concluded by plea agreement proceedings. These 61 cases have involved a total of 111 persons, while the total number of persons indicted by the Tribunal (excluding contempt indictments) is 161. With respect to the remaining 50 persons, 13 persons were transferred pursuant to rule 11 bis of the Rules to national jurisdictions (see paras. 82–86 below) and for 37 persons the proceedings were otherwise terminated, owing to the withdrawal of indictments or the death of the accused.

the parties prepare for trial, for instance through meetings with the parties. In a similar vein, pursuant to an amendment of rule 68 bis of the Rules, the pretrial judge or the Trial Chamber could decide on sanctions to be imposed on a party which failed to perform its disclosure obligations.[109] In addition to this, the introduction of rule 73 (D) of the Rules permitted the Registrar to withhold the payment of fees associated with the production of a motion that a Chamber determines to be frivolous or an abuse of process.[110]

71. On 13 December 2001, rule 62 ter of the Rules was adopted, permitting the Prosecutor and the defence to enter into plea agreements to be presented to the Trial Chamber for consideration. This provision was used extensively and caused a significant increase in the number of guilty pleas before the Tribunal.[111] Of the 20 guilty pleas that the Tribunal has received, 6 were made after the adoption of rule 62 ter and all of them between 2002 and 2007.[112]

72. Trials can be expedited in numerous ways and Trial Chambers have used a variety of tools to this effect over the years. Trial Chambers have, for instance, used rule 73 bis of the Rules to require the prosecution to focus its case, knowing that the scope of the indictment is an important factor in estimating the duration of the trial. Following an amendment of this provision, a Trial Chamber could invite and/or direct the prosecution to select those counts in the indictment on which to proceed, thus ensuring respect for the right of the accused to a fair and expeditious trial and serving to prevent unduly lengthy periods of pretrial detention.[113] By using this rule, Trial Chambers have achieved substantial time savings, while balancing the interests of justice with the streamlining of prosecutions.[114] Moreover, the Rules have permitted Trial Chambers to determine the number of witnesses that the parties may call to testify and the length of the parties' respective cases.[115]

73. Numerous amendments to the Rules have also made the presentation of evidence more efficient. One of the most important was the adoption of rule 92 ter of the Rules, which authorizes a Trial Chamber to admit evidence from another case (in the form of witness statements and/or transcripts of testimony), which goes to prove the acts and conduct of the accused, in lieu of oral testimony of the witness.[116] By not requiring examination-in-chief of a witness, this provision has resulted in substantial savings of court time over the years, particularly in multi-accused trials. It should be noted, however, that the provision is a double-edged sword in that it may involve

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[109] A/57/379-S/2002/985, p. 16.

[110] A/60/267-S/2005/532 and A/60/267-S/2005/532/Corr.1, para. 7.

[111] A/57/379-S/2002/985, p. 16.

[112] Including the three guilty pleas in *Sikirica et al.* which were entered at the end of evidence in the trial in 2001. The following persons pleaded guilty before the Tribunal (in alphabetical order): Milan Babić, Predrag Banović, Miroslav Bralo, Ranko Češić, Miroslav Deronjić, Damir Došen, Dražen Erdemović, Miodrag Jokić, Goran Jelisić, Dragan Kolundžija, Darko Mrđa, Dragan Nikolić, Momir Nikolić, Dragan Obrenović, Biljana Plavšić, Ivica Rajić, Duško Sikirica, Milan Simić, Stevan Todorović and Dragan Zelenović.

[113] See also completion strategy report of 15 November 2006 (S/2006/898, para. 14).

[114] For example, in the *Mladić* case, the Trial Chamber adopted the prosecution's proposal to limit its presentation of evidence to a selection of 106 crimes, instead of 196 initially scheduled crimes in the indictment, and to limit the number of municipalities (or crime bases) to 15 instead of 23.

[115] Pursuant to rule 73 bis (C), the pretrial judge shall determine the number of witnesses and the time available to the prosecution for presenting evidence. Pursuant to rule 73 ter (C) and (E), the Trial Chamber hearing the case shall make the same determinations with respect to the defence. See also annual report of 17 September 2001 (A/56/352-S/2001/865), paras. 4 and 19.

[116] Annual report of 1 August 2007 (A/62/172-S/2007/469), p. 7. See also S/2006/898, para. 13, and S/2007/283 and S/2007/283/Corr.1, para. 11.

considerable time and effort out of court on the part of staff members, in analysing and synthesizing the evidence for the purposes of judgment drafting.

74. Contempt proceedings[117] have posed a significant challenge for the expeditious conduct of the Tribunal's proceedings and have caused several delays in the substantive trials.[118] Not only do such proceedings consume time additional to that used by the trial to which they relate, they also place an extra burden on judges and staff, diverting their attention from the substantive cases at hand.[119] An extreme example is the 11-month suspension of the *Šešelj* trial (from February to December 2009) to protect the integrity of the proceedings pending resolution of several contempt allegations.[120] The establishment of a pool of ad litem judges and their assignment to contempt cases alleviated the considerable burden caused by such proceedings.[121]

75. In late 2009, and responding to increases in witness intimidation and tampering, rule 92 quinquies of the Rules was created, permitting the admission of evidence where witnesses have been made unavailable owing to intimidation or bribery.[122]

76. A major change to the trial procedure was the amendment in 2005 of rule 98 bis of the Rules concerning any "no case to answer" motion by the defence following completion of the prosecution's case. Previously, a motion filed by the defence under this provision would result in a three-month delay in the proceedings to allow judges and Chambers staff to evaluate the evidence and prepare a written judgment. The amendment of rule 98 bis changed this procedure into an oral one, saving large amounts of time on the trials conducted since the amendment entered into force.[123]

77. Work processes within Chambers have, since very early in the Tribunal's existence, included commencing the drafting of judgments at an early stage during trials. This means that analysis of evidence is conducted as soon as the evidence is received by the Trial Chamber. Similarly, drafting of appeal judgments begins very early during the appeal proceedings.

78. Proceedings may also be expedited by setting time and word limits, for instance concerning the length of briefs.[124] Moreover, rules concerning interlocutory appeals on matters arising during a trial have been amended to require certification to appeal, which has had a positive effect on the number of such appeals.[125] Similarly a practice direction was adopted, setting out the formal requirements for appeals from judgment, in an effort to reduce ambiguity and lack of clarity in parties' written submissions.[126]

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[117] Contempt allegations take many forms, for instance intimidation and bribery of witnesses and illegal disclosure of confidential information of both States and witnesses (see S/2009/252, para. 9).

[118] S/2010/270, para. 10.

[119] S/2009/252, para. 35. In some cases the permanent judges were seized of up to 10 contempt cases in addition to the substantive cases, see annual report of 1 August 2012 (A/67/214-S/2012/592), para. 9.

[120] S/2010/270, para. 10.

[121] See paras. 105–109 below, and paras. 35 and 36 above.

[122] Annual report of 31 July 2011 (A/66/210-S/2011/473), paras. 6 and 23.

[123] A/60/267-S/2005/532 and A/60/267-S/2005/532/Corr.1, p. 3 and para. 7, in which it is noted that in *Orić*, the expected three-month delay was shortened to one week. See also S/2005/343 and S/2005/343/Corr.1, para. 5.

[124] A/56/352-S/2001/865, para. 49.

[125] S/2004/420, paras. 37 and 38. See also A/57/379-S/2002/985, p. 12. Another appeals-related procedure which was simplified was the removal in 2005 of the requirement in rules 54 bis, 65 and 127 that leave be granted by a bench of three judges of the Appeals Chamber before a bench of five Appeals Chamber judges would decide the interlocutory appeal (see S/2005/781, para. 7).

[126] A/57/379-S/2002/985, p. 12.

79. Finally, as an international criminal tribunal responsible for extremely large cases involving mass atrocities, the Tribunal needed to develop innovative ways of dealing with overwhelming amounts of documentary and other evidence. Technology has played an important role in this regard, in particular the Tribunal's digital initiatives for case management and presentation.

80. Since the *Halilović* trial, which began on 31 January 2005, every case before the Tribunal has utilized the eCourt electronic court system. This system has considerably increased the efficiency of trials and appeals, both in court and out of court, by removing the need for hard-copy documents. It permits simultaneous presentation in court of documentary, photographic and video evidence in several languages and includes functions for the admission and management of evidence. It ensures that evidence is available to all parties and the relevant Chamber, from the moment it is presented in court. In addition, the system permits witnesses to make markings on exhibits (for example, on photographs or maps) and enables the Chamber and parties to systematize evidence, whether in the form of documents, photographs, videos or transcripts of testimony. This significantly simplifies the analysis of evidence, enhances its accessibility and thus also assists in the drafting of, for instance, judgments and the parties' briefs.[127]

81. Two further digital initiatives are the judicial database and eDisclosure. The database, which contains all filed Tribunal documents, became operational in May 2003 and has simplified and made more effective the judicial work across the Tribunal.[128] The eDisclosure system was developed by the Tribunal to allow for streamlined disclosure of large volumes of documents from the prosecution and the defence. The system gives the defence the same electronic search capability as the prosecution, increasing both the procedural fairness and the defence's efficiency in preparing their case.

2. Referrals

82. As a direct result of the completion strategy, the Tribunal has referred a total of eight cases involving intermediate and lower-level accused to national jurisdictions.[129] These cases concern a total of 13 accused, 10 of whom were transferred to the War Crimes Chamber of the State Court of Bosnia and Herzegovina, 2 to the Zagreb County Court in Croatia, and 1 to the Belgrade District Court in Serbia. As is evident from the Tribunal's annual and completion strategy reports, this impressive development took time and required much preparatory work.

83. As noted earlier, a key requirement for case referrals is that the relevant national jurisdictions have sufficient resources and, crucially, operate fairly and with respect for the principles of international human rights. To this end, following submission of the joint report on the judicial status of the International Tribunal for the Former Yugoslavia and the prospects for referring certain cases to national courts,[130] the President and Prosecutor travelled to Bosnia and Herzegovina in June 2002 to assess the ability of national courts to try cases of the Tribunal and subsequently presented

[127] Annual report of 20 August 2003 (A/58/297-S/2003/829), p. 4, see also A/60/267-S/2005/532 and A/60/267-S/2005/532/Corr.1, para. 8. The time saving during the *Halilović* trial has been estimated at 1.5 months, due to the use of eCourt, (see S/2005/781, para. 21). See also completion strategy report of 18 May 2011, S/2011/316, para. 9.

[128] A/58/297-S/2003/829, p. 4.

[129] This concerns the following cases: Radovan Stanković, Rahim Ademi and Mirko Norac; Gojko Janković, Željko Mejakić, Momčilo Gruban, Dušan Fuštar and Duško Knežević; Paško Ljubičić; Mitar Rašević and Savo Todorović; Vladimir Kovačević, and Milorad Trbić. Motions under rule 11 bis of the Rules were rejected in the *Dragomir Milošević*, *Delić*, and *Lukić and Lukić* cases, and withdrawn in the *Mrkšić et al.*, *Rajić* and *Zelenović* cases.

[130] See para. 38 above.

to the Security Council their conclusions regarding the possible establishment of a court with special jurisdiction to try war crimes within the State Court of Bosnia and Herzegovina.[131]

84 In 2003, the Tribunal reached an agreement with the Office of the High Representative in Bosnia and Herzegovina concerning the establishment of a special chamber for war crimes prosecutions in the State Court of Bosnia and Herzegovina.[132] The Tribunal also engaged in a number of initiatives designed to share expertise and information with the Croatian authorities to help prepare their judicial system for referral of cases; similarly, efforts were made to enhance the ability of courts in Montenegro and Serbia to conduct trials that meet international human rights standards and due process.[133] The War Crimes Chamber of the State Court of Bosnia and Herzegovina opened officially on 9 March 2005.[134]

85. With respect to the legal structure governing referrals, the relevant provision, rule 11 bis of the Rules, was amended in April 2004 to expand the available national jurisdictions to which cases could be referred by requiring only that the national trial be fair and that the accused would not be subject to the death penalty.[135] A further development, which had a considerable impact on the effectiveness of the Tribunal's referrals, was the amendment of rule 11 bis in February 2005, permitting the President to designate a special Referral Bench of three permanent judges, rather than a Trial Chamber, to rule upon the prosecution's motions for referral.[136] As a result, the Referral Bench and its staff developed considerable expertise and efficiency in disposing of motions under rule 11 bis.

86. Referrals have resulted in significant time savings for the Tribunal by removing the need to try 13 accused, or just over 8 per cent of the Tribunal's 161 accused. At the same time, the referrals process has strengthened national legal systems and judicial authorities in the former Yugoslavia. Throughout, the Tribunal has continued to provide training and capacity-building expertise to the national courts and authorities.

3. Working groups

87. The Tribunal, being the first international criminal tribunal since the Nuremberg and Tokyo Tribunals, has had to not only find the way forward but actually build it. To that end, Chambers working groups have been established by the President over the years to monitor the Tribunal's casework, with a view to suggesting enhancements. While the statute and the Rules as governing documents have formed a robust structure for the Tribunal's work, myriad improvements have been made to the Tribunal's trial and appeals procedures as a result of such suggestions, mainly in the form of changes to the Rules.

88. Even before the completion strategy was developed, two working groups had been established to find ways to improve the effectiveness of the Tribunal's proceedings. The Judicial Practices Working Group and the Appeals Chamber Working

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[131] A/57/379-S/2002/985, para. 6.

[132] Progress over the years regarding the establishment of the War Crimes Chambers is set out in the Tribunal's annual reports and the completion strategy reports.

[133] S/2004/420, paras. 26–28. See also S/2005/781, paras. 29–30; S/2005/343 and S/2005/343/Corr.1, para. 13; and completion strategy report of 31 May 2006 (S/2006/353, paras. 37–45).

[134] A/60/267-S/2005/532 and A/60/267-S/2005/532/Corr.1, para. 10.

[135] A/59/215-S/2004/627, para. 10. Previously the provision only permitted referrals to a national jurisdiction in which the alleged crimes had been committed or the place where the accused was arrested.

[136] A/60/267-S/2005/532 and A/60/267-S/2005/532/Corr.1, para. 30.

Group were established in September 1999 and November 1999, respectively. Having received, in late 1999, the report of the Expert Group mandated to evaluate the functioning of the Tribunal,[137] the then President, Judge Jorda, requested the Judicial Practices Working Group to consider that report, which resulted in a number of revisions to the Rules.[138] That Working Group continued to make suggestions regarding trial and appeal efficiency, including amendments to rule 15 bis of the Rules, to allow for the replacement of a judge in the event that the judge is unwell or otherwise unable to continue sitting in a part-heard case (including in the absence of approval by the accused),[139] and rule 73 bis of the Rules, to give the Trial Chambers greater control of the scope of the prosecution's case.[140]

89. In addition to amendments to governance documents, the creative planning of cases has been a significant part of the Tribunal's implementation of the completion strategy. The Working Group on Scheduling of Cases, established in 2003, was tasked with improving the efficiency with which trials are scheduled.[141] Over time, the remit of the Working Group was expanded to cover appeals, and its name was changed to the Trial and Appeals Scheduling Working Group. It is one of the longest continually serving working groups of the Tribunal and has been a key advisory tool for the President.[142]

90. The importance of the Trial and Appeals Scheduling Working Group cannot be overstated. As noted in past reports, estimations of trial and appeal duration are notoriously difficult to conduct, in part because of the organic and dynamic nature of criminal proceedings of the magnitude heard by the Tribunal, and in part because the Tribunal depends ultimately on external circumstances, in particular State cooperation and the support of the Security Council and the General Assembly. It is safe to say, as noted in the Tribunal's very first completion strategy report, that:

> The work of this group has been invaluable in the Tribunal's ability to forecast the resources and measures that will be needed in achieving the completion strategy. It has also helped to ensure that new cases are fully ready for trial whenever a presently pending case is concluded.[143]

91. The Trial and Appeals Scheduling Working Group was chaired by the Vice-President and monitored the progress of trials and appeals while identifying and seeking to mitigate potential causes of delays. A main consideration early on was to identify cases in the pretrial stage that were ready for trial and which might be heard at trial by the same Chamber responsible for the pretrial preparation.[144] Experience has shown that this is a major efficiency measure for trial proceedings, as the bench will already be familiar with the substance of the case. With respect to the projections concerning the duration of appeal proceedings, a more empirical methodology was applied to obtain more accurate timelines.[145]

92. As the caseload increased, the Trial and Appeals Scheduling Working Group sought more creative ways to make use of the Tribunal's resources in order to move

[137] A/54/634-S/2000/597.
[138] A/56/352-S/2001/865, paras. 54–59.
[139] A/58/297-S/2003/829 and A/58/297/Corr.1-S/2003/829/Corr.1, para. 12. The amendment was adopted in December 2002.
[140] Ibid. The amendment was adopted in July 2003.
[141] S/2004/420, para. 42.
[142] Ibid.
[143] Ibid.
[144] S/2007/283, para. 14.
[145] A/66/210-S/2011/473, para. 9.

cases faster towards completion. By monitoring cases and identifying gaps in their scheduling, it was possible to make the best use of available courtrooms.[146]

93. In addition to the Trial and Appeals Scheduling Working Group, the Working Group on Speeding Up Trials has actively made suggestions to improve trial efficiency since its establishment in 2005.[147] In April 2006, the plenary of judges adopted a number of its proposals, which focused on the authority of pretrial judges to direct preparations to ensure that cases were ready when courtrooms became available, and on judges' proactive steering of trials.[148] On 21 May 2010, the Working Group on Speeding Up Trials submitted a report to the plenary with a number of reforms, which were adopted by the plenary on 7 June 2010. Those amendments predominantly concerned evidentiary issues, for instance that direct examination on issues fully covered by rule 92 ter statements or transcripts would be disallowed; that parties would be required to identify in advance issues in dispute and refrain from unnecessary direct and cross-examination; and that oral decisions would be the preferred way to rule during proceedings, eliminating the need to translate written decisions.[149]

94. The Working Group on Speeding Up Appeals, also established in 2005, made numerous recommendations to expedite appeals proceedings. Early on, and with a view to avoiding repetitious motions from the parties, it recommended adjusting the time limits for filing motions for admission of additional evidence under rule 115 of the Rules.[150] The Working Group on Speeding Up Appeals also recommended shortening the period for notice of appeal from sentencing judgment from 75 days to 30 days and expanding the powers of the pre-appeal judge to obviate the need to consult the full Appeals Chamber bench on routine procedural motions.[151] These recommendations were adopted by the plenary of judges, along with subsequent recommendations, including on strict adherence to the requirement of good cause to vary time and word limits, which was particularly important to the management of the extremely large appeals pending before the Tribunal towards its end date.[152]

95. Finally, in view of the large number of contempt proceedings and their impact on the expeditiousness of trials,[153] a separate working group was established in 2009 to make recommendations concerning how allegations of contempt could best be managed. In its report of July 2009, the working group recommended that certain time

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[146] Such gaps may arise as a result of illness of the accused or counsel, failure of witnesses to appear, judgment drafting or other unforeseen circumstances that lead to the adjournment of proceedings. See e.g., para. 53 above.

[147] S/2005/343 and S/2005/343/Corr.1, para. 6.

[148] A/61/271-S/2006/666, para. 8. The improvements involve workplans and strict deadlines for disclosure under rule 65 ter of the Rules, sanctions under rule 68 bis of the Rules in the event of non-compliance, and greater specificity of the prosecution's trial strategy to avoid delays mid-trial due to changes. For a detailed description of the recommendations of the Working Group on Speeding Up Trials, see S/2006/353, paras. 18–34, and S/2006/898, paras. 11–12.

[149] Annual report of 30 July 2010 (A/65/205-S/2010/413), para. 7; S/2010/270, para. 17; and S/2011/316, paras. 17–18, in which it is noted that these amendments were integrated into ongoing proceedings.

[150] S/2005/781, para. 13. See also the annual report of 1 August 2007 (A/62/172-S/2007/469), para. 6.

[151] S/2005/781, para. 14. See also A/62/172-S/2007/469, para. 6.

[152] Completion strategy report of 15 November 2006 (S/2006/898), para. 10, in which it is also noted that the briefing schedule on appeal is not delayed while awaiting the translation of the trial judgment.

[153] A/64/205-S/2009/394, para. 7. See also the completion strategy report of 17 May 2017 (S/2017/436), para. 5, in which it is noted that "the Tribunal has, to date, concluded ... contempt proceedings against 25 persons". See further, inter alia, S/2009/589, paras. 30–33; the completion strategy report of 16 November 2011 (S/2011/716), paras. 26–32; the completion strategy report of 16 November 2012 (S/2012/847), paras. 31–34; and S/2013/308, paras. 32–37.

limits in contempt proceedings be reduced in order to further expedite the proceedings.[154]

96. It should be noted that recommendations of working groups are, of course, not the only way to make adjustments to working methods. The Appeals Chamber has, for example, on its own motion implemented a number of reforms concerning its working methods, including the judgment-drafting process and the prioritization of work.[155]

4. Staff

97. Staff retention has been a major challenge for the Tribunal for many years. Staff shortages, both as a result of insufficient numbers of staff being hired, in view of the magnitude of the cases before the Tribunal, and, more recently, the departure of staff members for more secure employment elsewhere, have had a measurable impact on the Tribunal's efficiency and its ability to implement the completion strategy. This has been reported by the Presidents of the Tribunal on numerous occasions.[156] Put simply, the loss and lack of staff have contributed to delays in proceedings.

98. Staffing problems began in earnest in 2003 with the imposition by the international community of a hiring freeze as Member States' financial means were prioritized for other uses.[157] As a direct consequence, the Tribunal lost more than 10 per cent of its staff, which led to a dramatic decline in staff morale. The President stressed that it was essential to have adequate personnel to perform the Tribunal's

[154] A/64/205-S/2009/394, para. 7.

[155] See A/66/210-S/2011/473, para. 9.

[156] See S/2007/283, para. 19, in which the President noted the critical importance of retaining highly qualified and experienced staff in order to successfully implement the completion strategy, and the need for support from the Security Council and Member States in this regard. See also S/2008/326, para. 30, in which he noted the "lure" of experienced staff to more permanent courts. With respect to delays caused by staff attrition, see, for instance, S/2010/270, para. 41, in which it is noted that the *Šainović et al.* appeal (concerning a massive trial judgment of more than 1,700 pages and with appeals briefs exceeding 250,000 words combined) was suffering delays due to staff attrition, including of staff in supervisory roles. In the same report, the President noted (para. 23) that the *Stanišić and Župljanin* Chambers team consisted of four staff members plus a fellow, of whom only two staff members had more than one year of experience at the Tribunal, which adversely affected the rate of disposing of motions, in turn causing delays. The President also stated (para. 27) that the *Karadžić* Chamber was "significantly understaffed" and that the staffing shortage "will continue to impact the time required to deal with the ongoing motions and practical issues arising during the course of the trial and to conduct the necessary analysis of evidence". See further S/2010/588, para. 15, in which the detrimental impact of the loss of experienced staff members upon the pace of the judgment drafting in the *Đorđević* trial was noted, as was the fact that progress on the *Šešelj* trial was negatively affected by significant staff turnover leading to the reduction of the team by almost half, in particular with respect to determining and disposing of motions and analysing evidence; and the completion strategy report of 16 November 2011 (S/2011/716), in which it was noted that the projected time frame for delivery of the appeal judgment in the *Milan Lukić and Sredoje Lukić* case had been delayed by eight months since the previous report, owing largely to the departure of half of the team, including the Senior Legal Officer (para. 33), and that the projected time frame for delivery of the appeal judgment in *Šainović et al.* had been extended by five months owing to staff shortages, staff attrition and continuous changes in the composition of the team due to the use of staff members on temporary contracts (para. 34).

[157] See A/59/215-S/2004/627, summary, in which it is noted that by the end of 2003 the Tribunal and the International Criminal Tribunal for Rwanda were in a cash deficit exceeding $70 million due to "a growing and significant gap between, on the one hand, the budget approved and the related assessments for the Tribunals, and, on the other, the collection of contributions by Member States".

work.[158] The freeze was lifted in January 2005.[159] However, the situation did not improve much; in November 2009 the President reported that the Tribunal was losing staff at the rate of one per day.[160] At that time, the Chambers Legal Support Section lost 21 per cent, or one in every five, of its Professional-level staff members.[161]

99. The effect of staff shortages was also noted in 2010 by the Working Group on Speeding Up Trials, which expressed the "greatest concern" that staff turnover affected the ability of the Trial Chambers to process evidence and dispose of motions.[162] The Working Group noted in particular that delays in dealing with procedural matters frequently resulted in additional procedural issues arising from the unresolved matters, causing a "snowball effect".[163] The obvious solution, in the view of the Working Group, was that the Tribunal's management do "all it can to retain the Tribunal's experienced staff".[164]

100. As the Tribunal's annual and completion strategy reports show, the Tribunal has, on many occasions, requested practical and effective retention measures from the Security Council to halt the near-constant drain of competent and experienced staff. While the Tribunal's pleas to be granted the ability to provide a financial retention incentive to staff members have not been successful, in June 2010 the Security Council adopted resolution 1931 (2010), in which the Council noted the importance of the Tribunal being adequately staffed and called upon the Secretariat and other United Nations bodies to continue to work with the Registrar of the Tribunal to find practicable solutions. This was reiterated in Security Council resolutions 1954 (2010) and 1993 (2011).[165] Unfortunately, staff retention has continued to pose a significant challenge.[166] In particular, as the Tribunal's work shifted more towards appellate proceedings, the Chambers found themselves in a quandary, having to frequently reassign staff from the Appeals Chamber to trial teams to compensate for the loss of trial staff and ensure continued progress on trials. For instance, in mid-2011, the Appeals Chamber was extremely understaffed, having sufficient staff for only two appeals but being seized of four.[167]

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[158] S/2004/420, paras. 7 and 56–61. See also the completion strategy report of 23 November 2004 (S/2004/897), para. 21, in which it was noted that Chambers in particular were losing staff.

[159] A/60/267-S/2005/532 and A/60/267/Corr.1-S/2005/532/Corr.1, para. 2.

[160] S/2009/589, para. 40.

[161] S/2010/270, para. 51, in which it was also noted that the Tribunal's downsizing was occurring at the same time that the Tribunal was at its highest level of productivity, without a commensurate increase in staffing levels since the 2006–2007 biennium. See also ibid., paras. 52–58.

[162] Ibid., para. 49.

[163] Ibid. The Working Group observed that, even if departing experienced staff members were replaced by highly competent recruits, institutional knowledge was still lost and remaining experienced staff must take on an additional responsibility to train new staff, which diverted attention from the Chamber's primary work.

[164] Ibid.

[165] Completion strategy report of 16 November 2011 (S/2011/716), para. 44. See also the annual report of 1 August 2012 (A/67/214-S/2012/592), para. 5, in which it was noted that a waiver obtained from the Department of Management would allow the Tribunal to hire interns without waiting for six months after the termination of their internships, thereby allowing it to quickly replace departing staff in certain circumstances. See further the completion strategy report of 23 May 2012 (S/2012/354), para. 10.

[166] S/2011/716, para. 6. See also S/2010/588, paras. 59–68, for a detailed description of the difficulties faced and the lack of a robust response to the Tribunal's pleas for foresight and assistance with respect to incentive measures to retain staff. See also A/66/210-S/2011/473, para. 5, in which it is noted that, without "practical and effective staff retention measures, the estimates for the completion of the core work of the Tribunal may have to be revised", and A/67/214-S/2012/592, para. 4.

[167] S/2011/316, para. 58.

101. Since then, the Tribunal has continued to struggle to address the impact of attrition, particularly in the Chambers, by reassigning additional staff, where possible, and offering promotions as an incentive to retain staff, as well as exploring other options, such as an end-of-service grant.[168] In October 2016, the Tribunal again presented to the Department of Management a proposal for financial retention initiatives for those staff members who remain at the Tribunal until the end of their contracts.[169] That proposal was similar to a previous one made in 2008 that had been endorsed by the International Civil Service Commission and recommended by the Advisory Committee on Administrative and Budgetary Questions, but on which the Fifth Committee did not take action. Unfortunately, although the 2016 proposal was considerably reduced in terms of scope and proposed expenditure compared with the 2008 proposal, the Department of Management never presented the later proposal for consideration by the Advisory Committee or the General Assembly.[170]

102. In the lead-up to the Tribunal's closure, the continued departure of key staff has been particularly acute and its impact felt even more keenly. It must be noted that, in circumstances in which departing staff members can no longer be replaced owing to the late stage of the final cases, staff attrition at the Tribunal has had serious negative consequences for the health, morale and, importantly, productivity of staff members who remain until the end of their contracts. By necessity, these staff members are each doing the jobs of two, if not three, staff members in order to complete the remaining cases on time, and they are paying the price for this overwhelming workload over an extended period. Their exceptional efforts have enabled the Tribunal to finish its judicial work, but it is abundantly clear that the situation could not have been sustained any longer. The Tribunal regrets that its repeated requests for assistance from the United Nations in its final two years have been met with deaf ears and that very little of substance has been done from the side of the United Nations administration to alleviate the situation.

103. The broader lesson to be learned from the exceptionally challenging staffing situation at the Tribunal is to realize that staff members in "temporary" institutions ought to be given as much employment security as possible. This necessarily entails ensuring that they are willing to remain in post, which, in turn, requires brave managerial decisions by the Organization. The United Nations is nothing without the people who choose to give their time, and in many cases the most productive years of their professional lives, to the service of the greater good. In this respect, the Tribunal urges the United Nations to learn from the Tribunal's experience and, as an organization of best practices, to better protect the health, well-being and productivity of United Nations staff members in future downsizing institutions. Anything else is

[168] Annual report of 1 August 2016 (A/71/263-S/2016/670), para. 6. To assist the remaining mega-appeal, *Prlić et al.*, which is approximately the size of the *Šainović et al.* and *Popović et al.* appeal proceedings combined, Chambers management doubled the size of the Chambers legal support team to enable the Appeals Chamber to issue its judgment in *Prlić et al.* in conformity with the projected time frame, which was shorter than the time taken for the other multi-accused appeal judgments.

[169] Annual report of 1 August 2017 (A/72/266-S/2017/662), para. 9.

[170] A/72/266-S/2017/662, para. 9, in which it was also noted that, in 2016, unlike in 2008, the Tribunal's completion strategy had a firm target date of 31 December 2017 and staff attrition had reached a critical level and that, moreover, since the Tribunal's downsizing plan had been largely implemented, there were far fewer staff members eligible for retention incentives, meaning that the costs involved would be considerably reduced. For more on this, see S/2013/308, para. 48, which recalls with respect to the proposal made in 2008 that, in the report of the Secretary-General on the matter, it was concluded that the savings associated with the retention initiative, including reduced turnover and higher productivity and efficiency, would more than offset the eventual cost.

short-sighted management, which devalues the Organization's most precious resource and, by necessity, will involve needless expenditure of greater sums of money.

5. Structure

104. The statute of the Tribunal originally provided for two Trial Chambers and one Appeals Chamber.[171] However, on 13 May 1998, in response to a request by the President,[172] the Security Council established a third Trial Chamber and increased the number of judges by 3, to 14.[173]

105. Furthermore, as noted previously, on 30 November 2000 the Security Council amended the statute by expanding the number of permanent judges to 16 and establishing a pool of 27 ad litem judges from which the President could draw,[174] as proposed earlier by the Tribunal.[175] On 1 June 2001, the General Assembly elected the ad litem judges,[176] nine of whom were assigned to specific cases and took up their duties between July 2001 and March 2002.[177]

106. Those amendments to the statute allowed each Trial Chamber to be composed of up to three permanent judges and six ad litem judges and to be divided into "sections" of three judges, each of which was afforded the same powers and responsibilities as a trial chamber under the statute. This set the stage for the very active period, which permitted the Tribunal to hear up to 10 trials simultaneously.[178]

107. On 19 May 2003, following recommendations by the Tribunal, the Security Council expanded the authority of ad litem judges to conduct pretrial proceedings in cases other than those to which they had been assigned.[179] That important amendment contributed significantly to bringing cases to trial, and ultimately completion, more expeditiously. In a similar vein, amendments to the statute in 2005 removed the prohibition on the re-election of ad litem judges, which benefited the Chambers' effectiveness as the ad litem judges became more experienced in their roles.[180] The increase in 2006 of the number of serving ad litem judges from 9 to 12 was also a welcome amendment and permitted the President to assign ad litem judges as reserve judges in lengthy, multi-accused trials.[181]

108. In view of the increased workload, and having obtained the approval of the Security Council in February 2008, the President appointed two ad litem judges above the statutory limit of 12 to allow the Tribunal to commence two new trials, thus

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[171] Security Council resolution 827 (1993) and the report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993) (S/25704 and S/25704/Corr.1).

[172] See the identical letters dated 5 May 1998 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council (A/52/891-S/1998/376) and its annex and appendix. See also "President McDonald asks the Security Council to establish an additional Trial Chamber", press release, 16 February 1998, available from www.icty.org/en/press/president-mcdonald-asks-security-council-establish-additional-trial-chamber. The President had requested four new judges.

[173] Security Council resolution 1166 (1998).

[174] Security Council resolution 1329 (2000). See also A/55/382-S/2000/865 and annex I thereto and the attached judges' report. In the report, the judges also suggested (at paras. 84–92) the creation of a fourth Trial Chamber, a measure that, according to the report, would improve first-instance productivity by 30 per cent.

[175] See para. 34 above.

[176] A/56/352-S/2001/865, summary.

[177] A/57/379-S/2002/985, para. 10.

[178] See para. 115 below.

[179] Security Council resolution 1481 (2003), amending article 13 quater (1), of the statute of the Tribunal.

[180] S/2005/343 and S/2005/343/Corr.1, para. 11.

[181] S/2006/898, para. 19.

bringing the number of parallel proceedings to eight.[182] Subsequently, owing to the impact of contempt proceedings on the existing caseload, the President, having received the Council's agreement, interpreted relevant regulations as permitting the assignment of ad litem judges to contempt cases that were not ancillary to the proceedings to which the ad litem judges were assigned.[183] This allowed for a more equitable distribution of work among the judges, speeding up both contempt and substantive cases as a result.

109. During the 16 years that the ad litem system was in force,[184] the capacity of the Trial Chambers to hear and complete cases expanded significantly. This was made possible by the creative use of the courtrooms, a crucial but finite resource of the Tribunal, and by having both permanent and ad litem judges hear two trials in parallel, thus sitting both morning and afternoon sessions on a more or less daily basis. The burden on Chambers staff members, who carry a considerable load to make the complex cases run, was equally heavy.

110. In 2006, a further structural change took effect within Chambers. Following a reorganization of the Chambers management, a Senior Legal Officer was appointed to the new role of Head of Chambers, with responsibility for the centralized management of and cooperation among the various Trial and Appeal Chambers, particularly as regards staffing. The creation of the position was in response to the increasing number of cases and workload and was successful in continuing to enhance operational efficiencies, in line with the completion strategy.

111. The Appeals Chamber has also been modified over the years to be able to meet the challenges caused by increases in its workload. As noted previously, in December 2000 the Security Council created two additional seats on the Appeals Chamber, to be filled by judges from the International Criminal Tribunal for Rwanda. On 1 June 2001, the President assigned two judges of that Tribunal to those posts.[185] The same year, the President submitted a report concerning a reform plan for the Appeals Chambers of the two Tribunals. The report included numerous suggestions to improve the organization, management methods and proceedings of the Appeals Chambers to address the unprecedented rise in the number of cases.[186]

112. Finally, following the early termination of a trial and the consequent early conclusion of judges' mandates, the Tribunal found itself in 2016 with a shortage of judges to handle interlocutory appeals. On 6 September 2016, in response to a request by the Tribunal for assistance, the Security Council, by its resolution 2306 (2016), unanimously decided to amend the statute of the Tribunal by adding a new article 13 quinquies, which allows for the appointment of an ad hoc judge in the event that there is no permanent judge available for assignment to the Appeals Chamber. Subsequently, Judge Burton Hall (Bahamas) was appointed as an ad hoc judge and assigned to three interlocutory appeals from the *Mladić* case.

6. Courtrooms

113. The Tribunal's courtrooms are among the most critical aspects of the institution's judicial work and deserve particular attention. The original courtroom,

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[182] Annual report of 4 August 2008 (A/63/210-S/2008/515), para. 7, and S/2008/326, para. 3, in which it was noted that one of the Trial Chambers hearing a multi-accused case would hold additional hearings during the three-week summer recess so as to make use of the availability of the courtrooms. See also the completion strategy report of 24 November 2008 (S/2008/729), para. 3.

[183] S/2012/354, para. 10.

[184] The last ad litem judges left in 2016, following completion of the *Karadžić* trial.

[185] A/56/352-S/2001/865, summary.

[186] A/57/379-S/2002/985, para. 12.

Courtroom 1, which was designed to have capacity for smaller multi-accused cases, was finalized in 1995.[187] Courtroom 2, inaugurated in May 1998, was designed as a single-accused courtroom, while the full-sized Courtroom 3, suitable for large multi-accused cases, was inaugurated on 12 June 1998.[188] All three courtrooms were modernized in 2006. Courtrooms 1 and 3 were extended to allow for up to six accused and nine accused, respectively,[189] and Courtroom 2 was rebuilt to accommodate cases involving up to three accused, as well as hearings with all five judges of the Appeals Chamber.[190]

114. In the Tribunal's early years, hearings were held from mid-morning to mid-afternoon, from around 10 a.m. to around 4 p.m., with a break for lunch. The number of active cases increased around 2000 as a result of new arrests, and the schedule for each courtroom was, as a result, split into two daily shifts, from 9 a.m. to 1.45 p.m. and from 2.15 to 7 p.m., thus permitting the Tribunal to hear up to six trials in parallel. In this respect, as noted previously, the Trial and Appeals Scheduling Working Group found creative ways to enable hearing more than six cases in parallel, using gaps in the courtroom schedule.

115. In January 2007, the three Trial Chambers ran seven trials, three of which were multi-accused cases involving a total of 18 accused.[191] Throughout 2008, that figure rose to eight trials spread over the three Trial Chambers.[192] In 2009, the Tribunal ran seven to eight trials.[193] In 2010, the Tribunal reached its peak, running a total of 10 trials simultaneously.[194] From 2011 to 2013, the Tribunal ran nine trials.[195] While running nine trials in parallel during those years was impressive in view of the amount

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[187] "The International Tribunal welcomes with delight the 'magnificent donation' by the Netherlands and the United States of a 'very much needed' fully fledged second courtroom", press release, 8 January 1998. Available from www.icty.org/en/press/international-tribunal-welcomes-delight-magnificent-donation-netherlands-and-united-states.

[188] "Inauguration of Courtroom II will take place on 5 May 1998", press release, 1 May 1998, available from www.icty.org/en/press/inauguration-courtroom-ii-will-take-place-5-may-1998. See also "The International Tribunal for the Former Yugoslavia welcomes with gratitude the British Government's offer to finance the construction of an interim courtroom", press release, 17 July 1997, available from www.icty.org/en/press/international-tribunal-former-yugoslavia-welcomes-gratitude-british-governments-offer-finance; "The International Tribunal welcomes with appreciation Canada's support", press release, 22 December 1997, available from www.icty.org/en/press/international-tribunal-welcomes-appreciation-canadas-support; "The International Tribunal welcomes with delight the 'magnificent donation' by the Netherlands and the United States (see footnote 187); and "Minister Van Mierlo and Ambassador Scheffer to inaugurate Courtroom III on Friday 12 June", press release, 8 June 1998, available from www.icty.org/en/press/minister-van-mierlo-and-ambassador-scheffer-inaugurate-courtroom-iii-friday-12-june.

[189] "Diplomatic seminar held at ICTY", press release, 7 April 2006. Available from www.icty.org/en/press/diplomatic-seminar-held-icty.

[190] In 2005, the Working Group on Speeding Up Trials recommended remodelling Courtroom 2 to allow trials of up to three accused. It also recommended the creation of a fourth courtroom, which would allow for more flexibility in sitting arrangements, for instance by permitting pretrial and appeal proceedings without interrupting ongoing trial proceedings. S/2005/781, para. 8.

[191] A/62/172-S/2007/469, summary.

[192] Ibid., para. 3.

[193] S/2009/252, para. 8, in which it was noted that routine hearings in pretrial and appeal cases, such as status conferences and appellate oral arguments, were sometimes conducted very early in the morning to avoid disrupting the trial schedule.

[194] A/65/205-S/2010/413, para. 2, S/2010/270, para. 3, and ibid., para. 5, in which it was noted that the speed of translations suffered as a result of this workload. Regarding translations, in S/2012/354, para. 10, it was noted that, in the *Prlić et al.*, *Šešelj* and *Tolimir* cases, delays in translating the trial judgments threatened to significantly delay any appeals. On that basis, the President directed the Registrar to reduce projected translation times by half.

[195] A/66/210-S/2011/473, sect. III.B; A/67/214-S/2012/592, sect. III.B; and annual report of 2 August 2013 (A/68/255-S/2013/463), sect. III.B.

of casework for which the Tribunal was designed, the experience showed that courtroom capacity and staffing levels throughout the Tribunal, which was at the same time already "downsizing", were inadequate for its workload.

V. Implementation of the completion strategy: Registry

116. The Registry is responsible for the administration and servicing of the Tribunal and serves as its channel of communication. It is divided into two divisions: the Division of Judicial Support Services and the Division of Administration; it also manages the Tribunal's Communications Section and outreach programme. The Registry is led by the Registrar and the Deputy Registrar, who are supported by the immediate Office of the Registrar.

117. In view of its varied functions, the Registry's experiences in implementing the Tribunal's completion strategy are set out by section and unit, highlighting the particular challenges faced, the achievements made and the lessons learned.

A. Challenges, achievements and lessons learned: immediate Office of the Registrar

118. The immediate Office of the Registrar supports the Registrar in the overall responsibility of directing the Registry, providing strategic direction and oversight to the Divisions of Administration and Judicial Support Services and representing the Tribunal in its relations with the host State and other Member States, international organizations and external stakeholders. The Office also assists in representing the Tribunal in its relations with the various organs of the United Nations and their departments and offices and provides general legal advice across the range of Registry activities.

119. The immediate Office prepares the Registrar's submissions to the Chambers and the President of the Tribunal on any issue arising in the context of a specific case which affects or may affect the discharge of the Registry's functions. The Office is also responsible for negotiating and drafting agreements and memorandums of understanding with a variety of State and non-State actors and for defending the Organization in litigation before the Management Evaluation Unit and the United Nations Dispute and Appeals Tribunals. Uniquely in the United Nations system, the Registrar's decisions concerning non-staff members in matters of detention and legal aid are also subject to judicial review. The Office supports the Registrar in defending challenges to the Registrar's decisions, and this system has contributed to a robust and fair decision-making process at the Tribunal.

120. Since the establishment of the Tribunal, the Registry has been headed by four Registrars: Theodoor van Boven (February–December 1994), Dorothee de Sampayo Garrido-Nijgh (February 1995–December 2000), Hans Holthuis (January 2001–December 2008) and John Hocking (since May 2009).

121. With the creation of the Tribunal, the Registrar and the Registrar's staff were tasked with setting up the first international criminal court since Nuremberg and Tokyo. This presented unprecedented challenges on many levels, including defining the Tribunal's relations with the host State, determining the financial needs of the Tribunal and drawing up its first budget, defining the governance and legal framework for the work of the Registry and securing adequate staffing. Every Registry section and unit had to find its way; some of the challenges faced by the substantive Registry sections are described in further detail below.

122. Once the Tribunal's work picked up speed and resulted in the delivery of the first judgments, the Registry faced a new challenge: the negotiation of agreements for the enforcement of sentences. Pursuant to the Tribunal's statute, sentences are served in a State designated by the Tribunal from a list of States willing to accept convicted persons. The goal was to secure enforcement in States that were not too distant from the region of the former Yugoslavia, in order to allow for regular family visits. In response to the increasing number of convictions and convicted persons waiting for transfer at the Detention Unit, the Registrar and the immediate Office redoubled efforts in multilateral and bilateral meetings with European States, in particular, to secure the enforcement of sentences. The Tribunal successfully conveyed the message that, without the enforcement of its sentences, it was doomed to fail. Starting in 1997, the Office negotiated and concluded agreements on the enforcement of sentences with 17 European States. Between 26 August 1998, when Dražen Erdemović was transferred to Germany, and 1 July 2013, when the enforcement function transferred to the Mechanism, the Tribunal transferred 51 convicts to 13 different enforcement States, where their sentences have been enforced in compliance with the applicable law of the enforcing State and international standards on detention.

123. As Tribunal operations peaked and the institution began to downsize in line with decreasing judicial activity, the Registrar and the Tribunal as a whole faced another significant challenge to the Tribunal's operations: the departure of staff for more secure employment in other organizations.

124. To overcome that challenge, the Tribunal identified a range of measures that might improve the retention of highly experienced staff and reduce barriers to recruitment or promotion during the downsizing process. While the monetary incentives were not supported by the international community, the Tribunal was able to create certain non-monetary incentives. In particular, the Registrar created a learning and career management office within the Human Resources Section that supported staff in all aspects of professional and personal development, career management and transition during the extended period of downsizing and subsequent closure of the Tribunal. The Tribunal also took steps to implement United Nations policy by providing for the possibility of flexible working arrangements.

125. In addition, the Registrar established a committee of management and staff representatives to develop and recommend criteria for the downsizing of staff. The Registrar issued a series of decisions containing detailed information and instructions on staff downsizing, with the aim of ensuring maximum fairness and transparency of the procedure. In the light of its success and as the first of its kind, the Tribunal's comparative review and downsizing process has been hailed as a "best practice in leadership of a change process" by OIOS.[196] Thanks to the cooperation between management and the staff union in the development of the procedure, staff have generally accepted individual downsizing decisions, evidenced by the fact that few staff members requested management evaluation of such decisions and no case was presented to the United Nations Dispute Tribunal.

126. In the context of the completion strategy, the Registrar also faced the challenge of ensuring that the Registry's structure best served its operational needs. Consequently, the Registrar undertook a series of structural changes and streamlined working practices and procedures. Most recently, on 1 March 2014, the Registrar proceeded with the reorganization of the Division of Judicial Support Services, merging sections in a way that continued full support with a reduced number of staff.

[196] OIOS audit report on the implementation of the downsizing programme in the International Tribunal for the Former Yugoslavia (assignment No. A2010/270/04), 29 December 2010, para. 11.

127. In the past few years, the immediate Office has focused significant energies on supporting and speeding up the establishment of the Mechanism, the final step towards the completion of the Tribunal's mandate. From the commencement of the Mechanism's The Hague branch on 1 July 2013 until the completion of the Tribunal's mandate on 31 December 2017, the Tribunal will have shared its resources, particularly through the double-hatting of staff members, in all Registry sections and units. It is safe to say that each staff member of the Registry was involved in some way in setting up the Mechanism's The Hague branch, whether in judicial support functions, administrative services or the management of and access to the Tribunal's records.

128. The immediate Office is also actively engaged in ensuring that the Tribunal's records are transferred to the Mechanism for use by its offices or archiving in the Mechanism Archives and Records Section. The Registrar established a high-level working group to coordinate and oversee the transfer of records and to ensure the completion of all work (i.e., the transfer of 100 per cent of the Tribunal's records) by 31 December 2017.

129. In the final year of the Tribunal's mandate, the immediate Office, together with the Communications Section, has organized and participated in numerous legacy events to ensure that lessons learned in the Registry and beyond will be shared with the Tribunal's stakeholders and the international community.

B. Challenges, achievements and lessons learned: Division of Judicial Support Services

130. The Division of Judicial Support Services of the Registry consists of the Court Support Services Section, the Judicial Records Unit, the Detention Unit and the Conference and Language Services Section.

1. Court Support Services Section

131. The Court Support Services Section comprises four units, each managed by a head of unit. They are the Witness Support and Operations Unit and the Witness Protection Unit (collectively referred to as the Victims and Witnesses Section), the Courtroom Operations Unit and the Office for Legal Aid and Defence Matters.

(a) Victims and Witnesses Section

132. The Victims and Witnesses Section, the first of its kind in any modern international context, became operational in April 1995.

133. During the Tribunal's lifespan, the Section provided assistance and support to approximately 5,500 witnesses called to appear before the Tribunal and their accompanying support persons (80 per cent fact witnesses, 7 per cent expert witnesses and 13 per cent support persons). As some witnesses testified on more than one occasion, this resulted in almost 8,500 visits to The Hague or to locations connected by video link (236). Some 63 per cent of witnesses were called by the Office of the Prosecutor, 35 per cent by the defence and 2 per cent by Chambers. Almost two thirds of the witnesses testified publicly without any in-court protective measures.

134. Immediately after its establishment, the Section faced two major challenges: funding for several key positions, which were included in the Tribunal's regular budget only after several years of debate and lobbying; and defining counselling and psychosocial support for witnesses within an international legal framework. When the Tribunal began its work, there was no blueprint for witness support. The Section started developing an integrated system of logistical assistance, psychosocial support

and protection tailored to the specific needs of witnesses before, during and immediately after their testimony.

135. The increased number of trials of the Tribunal running simultaneously (as many as 10) necessitated increased operational capacity. The Sarajevo field office opened its doors in 2002 and was pivotal to the work of the Section's main office. It provided witnesses with easier and expanded access to the protection and support services of the Section, as well as organized travel to The Hague and facilitated testimonies by video link from the region. In addition, the field office allowed the Section to coordinate with local and international agencies in the former Yugoslavia, with a view to identifying additional sources of social and psychological services and other assistance for victims and witnesses. In 2013, in order to increase the efficiency of work and ensure the accuracy and completeness of witnesses' records, the Tribunal enabled shared access to the Section's database at the Sarajevo field office and in The Hague.

136. The Section endeavoured to ensure follow-up of the witnesses who testified before the Tribunal by contacting them four to six weeks after their return home. Both pre- and post-testimony contacts with witnesses have shown that there has been an ongoing misperception of the Tribunal and its role in the decision-making processes of local authorities. Some witnesses wrongly believed that the Tribunal, as an international institution, could support their requests before local institutions, make a recommendation to or even force local authorities to facilitate a positive outcome for their claims and reduce the time needed to solve an issue. At times, such misperceptions led to disappointment on the part of the Tribunal's witnesses. Learning from that experience, the Section recognized the importance of providing witnesses with timely and accurate information on the Section's and the Tribunal's respective mandates and roles, including the rules and procedures relating to compensation.

137. In addition to providing logistical and psychosocial support to witnesses, the Section also coordinated responses to address security threats to witnesses before, during and after their testimony. Relocation was the most extreme response, with approximately 1 per cent of witnesses having been relocated. This required close cooperation with law enforcement agencies in the Netherlands and in third States, as well as in the States of the former Yugoslavia.

138. More than a decade ago, the Section started addressing rule 75 (H) applications for the variation of protective measures. In that context, the Section was tasked with contacting the witnesses who had been granted protective measures to ask whether they consented to such measures and to their identities being shared with judicial organs and parties in national proceedings. As the number of such applications and their complexity increased over the years, Registry lawyers started assisting the Section's staff during witness consultations in order to address the many questions and fears voiced by witnesses in relation to the applications.

139. In 2012, the Section and the Castleberry Peace Institute of the University of North Texas launched a pilot study into the long-term impact of testifying on witnesses who were called to testify before the Tribunal. Key areas explored included reasons for testifying, the socioeconomic impact of testifying, security concerns, physical and psychological well-being, and perceptions about justice and the Tribunal. Between 2013 and 2015, the Section conducted in-person interviews with 300 fact witnesses across a broad geographic area in Bosnia and Herzegovina, Croatia and Serbia. To date, no study of such scale has ever used a systematic and scientific sampling of such a large population of witnesses called by all parties (prosecution, defence and Chambers).

140. The results of the pilot study were released in a report entitled "Echoes of testimonies: a pilot study into the long-term impact of bearing witness before the ICTY", the English version[197] of which was launched in The Hague on 9 June 2016 before practitioners, members of the diplomatic community and other stakeholders. Later that month, the pilot study team travelled to the region of the former Yugoslavia to present the results of the study in Sarajevo, Belgrade, Pristina and Zagreb. Later in 2016, the full report was also made available in Bosnian/Croatian/Serbian[198] and Albanian.

141. The report highlights that the process of testifying is varied, complex and different for each witness. Most of the participants had experienced severe emotional or physical trauma during the conflicts. The most frequently cited reasons for testifying were altruistic, namely to help the judges to reach an accurate decision and to fulfil a moral duty to victims. The vast majority of the 300 witnesses interviewed felt that they had been treated fairly by the Tribunal, regardless of whether they had been called to testify for the prosecution or the defence, and that they had contributed personally to justice and truth telling. With the study, the Section contributed to the legacy of the Tribunal and hopes to have provided input for future witness support models within court systems.

142. The Section also contributed to and participated in diverse training programmes, peer-to-peer meetings and other forums aimed at sharing expertise and knowledge with local witness support counterparts and protection units, both through the Section's main office and the Sarajevo field office. The Section organized conferences in The Hague, funded largely by the European Commission, to build stronger relationships and referral networks with health and welfare professionals from Bosnia and Herzegovina, Croatia, Montenegro, Serbia and the former Yugoslav Republic of Macedonia.

143. With the impending closure of the Tribunal, the Section has worked closely with the Mechanism's Arusha branch to prepare a joint framework for witness support and has harmonized as many policies and practices as operationally possible. With the commencement of the Mechanism's The Hague branch on 1 July 2013, the witness protection function transferred to the Mechanism. The Section's staff have been double-hatting to ensure the continuity of services to witnesses.

144. It is largely through the work and achievements of the Section that, at present, there is general recognition of the need for and importance of victim and witness units within both international and national courts. The Section had been used as a model in the establishment of similar witness units elsewhere, including in the International Criminal Tribunal for Rwanda, the International Criminal Court, the Special Court for Sierra Leone, the Special Tribunal for Lebanon and national courts in the former Yugoslavia.

(b) Courtroom Operations Unit

145. The Courtroom Operations Unit facilitates all court proceedings, including trial and appeal hearings, conferences held by video link, missions for the certification of witness statements and court-ordered missions. The Unit makes all the necessary organizational arrangements for court proceedings and is responsible for keeping a full and accurate record of such proceedings, including for retaining the evidence admitted. The Unit is also responsible for the execution of judicial orders and decisions.

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[197] Available from www.icty.org/x/file/About/Registry/Witnesses/Echoes-Full-Report_EN.pdf.

[198] Available from www.icty.org/x/file/About/Registry/Witnesses/Echoes-Full-Report_BCS.pdf.

146. Article 21 (4) of the Tribunal's statute and its jurisprudence allow an accused to self-represent, and from 2001 several accused have chosen to do so. At the outset, the Registry assisted self-represented accused on a case-by-case basis in close cooperation with or upon explicit orders by the Chambers. Experience showed, however, that there were issues that required communication and cooperation across several Registry sections and that a more efficient system was required. The Registrar met that need with the establishment of a *pro se* office within the Unit to better assist self-represented accused with the preparation of their defence, while ensuring that Registry resources are used as efficiently as possible and maintaining the neutrality of the Registry.

147. Thanks to the establishment of a *pro se* office, the Registry was able to develop expertise regarding the specific challenges and requirements of cases involving self-represented accused and consequently assist self-represented accused in a coordinated and competent manner.

(c) Office for Legal Aid and Defence Matters

148. The Office for Legal Aid and Defence Matters developed and administered the Tribunal's legal aid system and safeguarded the right of the suspects and accused to qualified defence counsel at all stages of the proceedings. This included the development of legal aid policies, the determination of the financial status of accused requesting legal aid, the management of the list of counsel eligible for assignment to suspects and accused before the Tribunal pursuant to rule 45 of the Rules ("rule 45 list") and the assignment and remuneration of counsel for indigent and partially indigent accused. Furthermore, the Office was tasked with the implementation of orders regarding the enforcement of sentences until October 2011 and was responsible for legal and policy issues pertaining to the Detention Unit until 31 December 2012. In order to streamline operations, those two portfolios were eventually moved to the immediate Office of the Registrar.

149. Over the course of the Tribunal's mandate, the Office for Legal Aid and Defence Matters assisted more than 220 assigned or appointed counsel and co-counsel[199] and more than 600 legal assistants, case managers and interpreters, as well as about 200 investigators and more than 100 defence experts. In addition, the Office assigned counsel to 28 accused in 25 contempt cases, as well as 16 amicus curiae prosecutors and investigators. The rule 45 list maintained by the Office included approximately 570 counsel from 28 different countries, of whom 13 per cent were women and approximately 24 per cent were from the region of the former Yugoslavia. Furthermore, the Office coordinated legal assistance to more than 120 suspects and about 50 detained witnesses.

150. Based on the Office's indigency determinations, of the 133 accused before the Tribunal,[200] 81 received full legal aid and 40 were found able to contribute to their defence and received partial legal aid. Ten accused did not request any legal aid. Two accused who had requested legal aid were found able to fully pay for their own defence.

151. From 2002[201] to November 2017, the Office administered legal aid budgets totalling $144,428,455. That figure covers counsel and support staff fees, including office costs, costs for translation and interpretation for client-counsel communication, defence travel and daily subsistence allowance for counsel when at the seat of the Tribunal.

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[199] Some of whom were assigned to several cases.

[200] Does not include contempt cases.

[201] In 2002, the Office was separated from Court Management and Support Services.

152. The Office's assistance to counsel was instrumental in the integration of the defence into the overall proceedings before the Tribunal. The Office ensured, for example, the provision of technical and logistical support to the defence to enhance their working conditions, thus helping to fulfil the principle of equality of arms. Moreover, the Office actively involved the defence in consultations about new policies, the Code of Professional Conduct for Counsel and other documents that have an impact on the defence's work.

153. The Office was the main liaison between the defence counsel and the Registry of the Tribunal and was instrumental in the creation of the Association of Defence Counsel practising before the International Courts and Tribunals.[202] The Office supported the ongoing training of counsel and defence support staff by logistically and financially assisting the Association in organizing annual training events. Many lawyers from the region of the former Yugoslavia, most of them young, participated in those training events, which provided them with insight into the work of the defence at the Tribunal and into international criminal law and procedure in general.

154. The Office continuously developed and improved the Tribunal's legal aid system. The original Directive on the Assignment of Defence Counsel provided for basic legal aid, based on a retainer, a daily fee and daily subsistence allowance. As the daily fee soon proved to be inadequate for the amount of work required by defence counsel, the Office introduced an hourly system, with a monthly maximum allowance of hours. Later on, in order to create an incentive for counsel to work more efficiently, and to improve the allocation of resources between cases varying in complexity, the Registry introduced an overall maximum allocation of hours for the pretrial and appeals phases, regardless of their actual duration, but based on the complexity of the specific case. However, owing to unwieldy administration, in 2002 the Registry implemented the first lump-sum system for the trial phase. Under the system, a lump sum is calculated on the basis of the complexity and estimated duration of the trial phase. The lump sum is then distributed in equal monthly stipends. The introduction of the lump sum significantly reduced the administrative burden on both the defence and the Office staff, allowed for more accurate budget projections and provided counsel with maximum flexibility and an incentive to manage their own resources efficiently. In 2004, owing to the success of the trial phase lump-sum system, a similar system was introduced for the pretrial phase. Notably, the expertise of the Office staff regarding the establishment and administration of legal aid systems is regularly sought by other international courts.

155. The Office further developed clear guidelines to clarify the provisions of the Directive on the Assignment of Defence Counsel with regard to the indigent status of applicants for legal aid. The guidelines introduced in 2004 considered not only the means of the accused but also the basic living expenses of the accused's family and other dependants. This led to the fair and transparent determination of the financial situation of accused requesting legal aid. The engagement of a financial investigator in the Office contributed tremendously to the monitoring and assessment of the financial status of the accused and helped to detect and prevent fee-splitting arrangements.

156. When the plenary of judges decided to amend the Rules in 2004 to introduce more stringent qualification requirements for counsel, the Office was instrumental in ensuring that those requirements were first implemented and then, through continuous monitoring of the qualifications and conduct of counsel, upheld. From 2004 onward, all defence counsel were required to be a member of the Association of Defence Counsel practising before the Tribunal, be proficient in English or French and have

[202] Previously known as the Association of Defence Counsel practising before the International Tribunal for the Former Yugoslavia.

no disciplinary or criminal convictions. In addition, to be eligible for assignment under the legal aid system, counsel were required to possess seven years of relevant experience and established competence in the law applicable before the Tribunal. The Office required all counsel to reapply for admission to the rule 45 list, and those who did not meet the requirements were taken off the list. However, in order to ensure that no accused was prejudiced, counsel who did not meet the new requirements but were actively involved in a case were allowed to finish their mandate before they were taken off the list. With its strengthened qualification requirements, the Tribunal has served as an example for other international criminal courts, such as the Special Tribunal for Lebanon and the International Criminal Court, which have built on the said requirements, at times imposing even stricter ones.

2. Judicial Records Unit

157. The Judicial Records Unit is responsible for all judicial records created within the Tribunal. The Unit is responsible for the receipt, filing, reproduction and public dissemination of court documents, including transcripts, exhibits, arrest warrants, indictments, motions, briefs and court orders issued by the Chamber.

158. The Registry has developed several tools to facilitate and further improve the work of its Judicial Records Unit, including software to automate the distribution of court filings and minimize the risk of human error and the likelihood of any unauthorized disclosure of confidential information. It has also developed a database to assist the Unit with the processing of Chambers' orders granting parties access to confidential materials in other cases, and to respond to external requests for certified copies of judicial records. The database allows official records to be automatically extracted from the Tribunal's judicial database and electronically certified, thereby significantly speeding up the process.

159. One of the most significant tools developed by the Tribunal is the judicial database, which allows registered users to search the online library of legal documents from the cases heard at the Tribunal. The database contains all decisions, judgments, pleadings, exhibits, transcripts and miscellaneous Registry and other filings. The database contains documents primarily in English, as well as in French and Bosnian/Croatian/Serbian. The Tribunal also created a public interface of the database, called "ICTY Court records", which gives the public access to all public judicial records of the Tribunal from 1994 to the present.

3. Detention Unit

160. The Detention Unit is a remand centre under the supervision of the Registrar and is located within a Dutch prison in the Scheveningen neighbourhood of The Hague, a few kilometres away from the seat of the Tribunal. The Unit houses persons accused and awaiting or undergoing trial and appeal before the Tribunal, convicted persons awaiting transfer to the State of enforcement and detained witnesses and persons charged with contempt.

161. Bearing in mind the presumption of innocence, the purpose of the Unit is to monitor and maintain the physical and emotional well-being of detainees, to defend their dignity as human beings and to protect their rights as individuals so that they can understand and participate in the proceedings before them at the Tribunal.

162. The Detention Unit is run in accordance with a well-established set of rules and regulations that govern every aspect of the activities of the Unit and the daily life of detainees. The regulatory regime includes rules of detention and regulations establishing a complaints procedure and a disciplinary procedure, as well as a procedure for the supervision of visits and communications. In addition, the Tribunal

has relied heavily on the host State and concluded several agreements for the provision of facilities and services at the Unit.

163. Operations at the Detention Unit commenced in 1995, with the first detainee Duško Tadić having been arrested and detained on charges of wilful killing, torture or inhuman treatment and murder. At the outset, most of the accused were charged with direct perpetration of the crimes. With the adoption of the completion strategy and the focus on higher-level accused, the profile of detainees at the Unit changed accordingly.

164. A major challenge for the Detention Unit was the length of time that most detainees spent in detention, which far exceeded periods of detention on remand in national settings. This was due to the complexity and resulting length of proceedings, as well as to the nature of the Tribunal as an international tribunal. Where possible, pursuant to the Rules and when requested by the detainees, Chambers would grant detainees provisional release to return to their home countries. However, with a few exceptions, such provisional release could be granted for only a few weeks at a time. This risked having an impact on detainee morale. However, as discussed further below, the Unit's management provided detainees with a broad range of activities to make their daily routine as varied as possible.

165. With the passage of time, the health issues of detainees and their ensuing health-care requirements presented another crucial challenge for the Unit's management and for the Tribunal as a whole. The average age of a detainee at the Unit was always considerably higher than in many national detention facilities and steadily increased from the initial average age of 39 years to the current 66.7 years. Many detainees arrived at the Unit with pre-existing health problems, relating to wartime injuries and lifestyle choices earlier in life. Subsequently, many began to experience health problems expected with their advancing age.

166. However, thanks to the medical care provided by the Medical Officer of the Unit and the Medical Officer's team, the Unit has been successful in meeting the specific needs of the detainee population. The Unit has its own medical service, headed by a Medical Officer and the Medical Officer's deputy. The medical service provides diagnosis and treatment of detainees and refers detainees to the medical services of the host prison and specialist facilities in the Netherlands when required. They are also provided with dietary advice, physical therapy and sports facilities and training. As a result, certain initially very ill detainees were able to improve their health while at the Unit. It is, however, an ongoing challenge to address the specific needs of elderly detainees, and the Tribunal is grateful for the advice and support received from its monitoring body, the International Committee of the Red Cross (ICRC), in this regard.

167. Another challenge relating to the health of detainees is the need to balance respect for the confidentiality of medical information and the demands of judicial actors to access that information. The Tribunal found it challenging to establish a satisfactory framework in this regard. The Registry has gone to great lengths to ensure that it follows international best practice and has sought and received advice from ICRC and other international medical ethics experts on the question of when, how and by whom medical information may be accessed. Among other measures, the Tribunal amended its Rules of Detention to reflect the extremely high threshold below which medical information may not be disclosed without the consent of the detainee.

168. One of the greatest achievements of the Unit involves the creation of a daily regime based on a policy of openness to facilitate the "normalization" of the detainees' daily lives to the extent possible and to avoid unnecessarily restrictive measures. The Unit runs a comprehensive programme of remand with a full daily schedule providing opportunities for fresh air, physical exercise, medical care,

recreational and sport activities, training and occupational therapy and spiritual guidance. The detainees also have access to satellite television channels and press from the former Yugoslavia, which reduces feelings of alienation and separation. To help detainees to maintain contact with their traditional support networks, the Unit's management has encouraged communications by telephone and adopted a very generous visiting regime. Visitors may stay up to 7 consecutive full days in any 30-day period, and a single visiting day lasts as long as eight hours.

169. The Registry has ensured that detainees are able to actively participate in their defence. All detainees have computer access and the possibility to participate in the exchange of electronic files with their counsel. Self-represented accused have been provided with additional facilities, such as additional cell space to store their documents. Such arrangements have required the Detention Unit to balance the interests of the detainees in accessing relevant legal materials with maintaining the security of the Unit and the safety of all detainees, staff and visitors.

170. The Detention Unit is subject to regular independent inspections by ICRC and has also participated in events organized by or in conjunction with ICRC, including on the needs of an elderly prison population, the difficulties of managing voluntary protest fasts, and medical ethics.

171. The detention regime has been adjusted over time to better accommodate the special characteristics of the Unit as a remand centre for an international criminal tribunal, the unique profile of the detainee population and the detainees' changing needs. The regime provides a tested framework in line with the highest international human rights standards for the treatment of detainees and has served as an example for other international criminal courts.

4. Conference and Language Services Section

172. Over the lifetime of the Tribunal, the Conference and Language Services Section has provided the language framework to support both the Tribunal's core judicial activities and its general work, in the Tribunal's official and working languages, namely English, French, Bosnian/Croatian/Serbian, Albanian and Macedonian, as well as in more than 25 other languages. In this context, it has delivered 1 million pages of translation and 80,000 conference interpreter-days. Throughout the Tribunal's lifespan, the Section was also responsible for providing court reporting services.

173. The Section was integral to the Tribunal's operations from the very beginning, translating vast amounts of documents collected and providing interpretation in witness interviews, both at Tribunal headquarters and in the field, during the investigation phase, long before the first trial began. Once the trials started, the Section handled a steady flow of courtroom-related documents, both evidentiary and legal, and started providing simultaneous interpretation for all court proceedings. The accuracy of simultaneous interpretation was consistently assessed at over 95 per cent, far in excess of what is usually considered acceptable (75 per cent). In time, as first trials and then appeals were completed, the Section translated the resulting judgments, which increased in complexity and length as the jurisprudence developed, reaching thousands of pages in recent years.

174. During its existence, providing constant support to extensive and high-profile judicial activity was not the only challenge that the Section faced. The Section had to create new terminology, particularly in Bosnian/Croatian/Serbian, but also in French, to enable translation within the Tribunal's hybrid legal system. As the Tribunal's Rules are based largely on common law principles and practices, albeit with numerous civil law elements included, and the legal system of the former Yugoslavia is based on continental law, this was a demanding professional task. That terminological

innovation will be the Section's principal legacy. Furthermore, early in the Tribunal's existence, it was decided, after in-house deliberation and consulting international experts, to treat Bosnian/Croatian/Serbian as a single language for interpretation and translation purposes. While this went against the prevailing climate in the region of the former Yugoslavia, it made the efficient conduct of judicial activity possible and saved significant time and resources. Initially greeted with scepticism by many parties, that innovation was ultimately applied with very few difficulties.

175. Providing services to all organs of the Tribunal, namely the Registry, Chambers and Office of the Prosecutor, as well as to the defence, the Section managed to handle a high volume of time-sensitive, confidential and often harrowing documents and hearings, with no incident and without creating a bottleneck in the proceedings. This was particularly significant in the trials involving self-represented accused, who had the right to receive all trial documents in a language that they could understand, unlike other accused, who were entitled only to translations of key documents. In this respect, the Section's constant efforts to multitask and to multi-skill its staff, including through in-house training and the deployment of new resources (such as computer-assisted translation tools and a translation tracking system) were essential to its success. Another key element in this respect was maintaining constant communication with requesting parties and Chambers in order to realistically manage the demand. To formalize this, translation and interpretation policies were drafted in due course.

176. At the height of the Tribunal's operations, with up to 10 concurrent trials to support, the Section comprised over 150 staff members. They were organized into three Translation Units (English, French and Bosnian/Croatian/Serbian), a Conference Interpretation Unit and a Reference, Terminology and Document Processing Unit. With the number of active cases decreasing, staff numbers were reduced in a planned fashion, in accordance with the Tribunal's downsizing policy, without affecting the timely delivery of its services.

177. After the Mechanism was established the Section provided significant support for the Mechanism's activities under the double-hatting arrangement. This included translating all of the Mechanism's basic documents, as well as providing organizational support in the recruitment of its language staff. As the Mechanism will take over the residual tasks of the Tribunal, the Section is working on an orderly handover of resources and know-how so that the new institution can accomplish its work as efficiently as possible.

178. The work of the Section has served as a model for these international institutions, as well as for institutions in the region of the former Yugoslavia, such as the State Court of Bosnia and Herzegovina and the European Union Rule of Law Mission (EULEX) courts.

C. Challenges, achievements and lessons learned: Division of Administration

179. The Division of Administration of the Registry has, throughout the lifespan of the Tribunal, provided high-quality services in the areas of security, human resources, general services, procurement, finance, budget and information technology. As noted previously, it has also been responsible for coordinating responses to, and compliance with, reports and recommendations of the Board of Auditors and OIOS.

180. As the first modern international criminal jurisdiction, the Tribunal's administration had to accommodate requirements not found elsewhere within the United Nations system, or even in any national jurisdiction. The General Services and

the Information Technology Services Sections designed and built specialized courtrooms that were equipped to address the myriad novel requirements of an international tribunal, including translation into three languages and broadcast facilities, as well as the often stringent witness protection requirements.

181. As noted above, the Tribunal became the first international court to allow for the full electronic submission of evidence, through the eCourt system.[203] The system allowed for the simultaneous electronic tendering, admission and presentation of documentary, photographic and video evidence in court in several languages. It also facilitated the markup of exhibits, such as photographs and maps, by witnesses and considerably sped up the synthesis and the analysis of evidence by Chambers during the judgment-drafting phase. The Tribunal was the first international court to implement such an electronic system for courtroom management, which subsequently became the model that future international courts adopted.

182. The Tribunal has long prided itself on its positive, collaborative and ultimately constructive staff-management relations. In its 2011 report on staff-management relations within the United Nations as a whole, the Joint Inspection Unit found that staff-management relations at the Tribunal were among those that exceptionally stood out from the majority of organizations surveyed, in that relations "can be characterized as ... cooperative".[204] Similarly, the Tribunal's downsizing process has been praised by OIOS as a "best practice in leadership of a change process".[205] OIOS also found that staff "felt that senior management has been visible, supportive and accessible during downsizing ... [and] a reliable source of communication on the downsizing process".[206] These positive results are due to the hard work of the Tribunal's management and its staff union, which has defended the interests of staff in a fair and open manner.

183. Most recently, the success of the Tribunal's collaborative approach to staff-management relations was demonstrated in the United Nations Global Staff Satisfaction Survey 2017, as mentioned above.[207] The results of the survey, including the Tribunal rating as the "least bureaucratic" of all Secretariat entities,[208] are a testament to the customer service orientation of the Registry, as well as to the Tribunal's continuing commitment to operating in an efficient and effective manner.

184. Another significant accomplishment is gender parity being achieved and even exceeded for Tribunal staff at the Professional level from 2009. Since then, gender parity at the Professional and Director levels has been reached or exceeded every year, with female staff consistently representing approximately 60 per cent of staff at the Professional and Director levels since 2014, despite the downsizing. The Tribunal's experience has shown that female candidates succeed in a positive, gender-equal recruitment system. From 2008 to 2014, female staff members consistently had a higher rate of promotion than male staff members. According to a recent internal survey, over 80 per cent of staff members believe that their gender has not had a negative impact on their recruitment or promotion.

185. Over the years, the Tribunal has offered approximately 100 staff members opportunities for cross-training, with the number of female staff participating more than double the number of male staff. Furthermore, 500 hours of one-on-one career transition coaching have been provided to staff, and dozens of in-house training

[203] See para. 80 above.
[204] A/67/136, para. 17.
[205] OIOS audit report on the downsizing of the Tribunal, para. 11.
[206] Ibid.
[207] See para. 22 above.
[208] See the results of the United Nations Global Staff Satisfaction Survey 2017, p. 2.

sessions organized, with attendance in 2017 being 3.2 times higher for female staff than for male staff.

186. The Tribunal is also proud of its pioneering establishment in 2003 of the Office of the Focal Point for Women, which has since played a vital role in supporting staff and advocated greater awareness of gender issues. The Focal Point for Women, in conjunction with the Working Group on Gender Issues, conducted a mentoring programme for more than 100 female staff members from 2013 to 2016. The programme received extremely positive feedback from 75 per cent of the participants and was praised as being effective in achieving real change for the women who were mentored.

187. Significantly, Tribunal staff have acknowledged and appreciated the commitment to gender equality and to a positive and empowering work environment, including in a recent internal staff survey. More than 70 per cent of respondents felt that people were treated equally in their office regardless of gender, while an overwhelming number (more than 97 per cent) personally felt that they made a positive contribution to the Tribunal.

188. With regard to the Tribunal's liquidation activities, since the adoption of the completion strategy and under the direction of the Registrar and the Chief Administrative Officer, the Division of Administration took the lead on such activities, including downsizing staff, closing field offices and disposing of assets. In order to accomplish that enormous challenge in a timely manner, the Tribunal took note of the lessons learned from the liquidation of the International Criminal Tribunal for Rwanda and started planning for the liquidation process in a timely manner. It adopted a liquidation plan and set up the Liquidation Task Force to guide the well-timed end of the Tribunal's operations and the appropriate handover of residual activities to the Mechanism.[209]

D. Challenges, achievements and lessons learned: communications and outreach

189. The Communications Section is at the core of the Tribunal's relationship with external audiences, in particular with stakeholders and the affected communities in the former Yugoslavia. The key mandate of the Section is to render the work of the Tribunal more transparent, accessible and comprehensible and to strengthen support for the fight against impunity in the countries of the region. The Communications Section consists of the Media Office, the Web Unit and an outreach programme.

190. One of the main challenges that the Tribunal faced from the start was to overcome or at least counter the negative portrayal of the Tribunal by those people who stood in the way of judicial accountability for war crimes and the rule of law in the region of the former Yugoslavia, a challenge exacerbated by the fact that the Tribunal was operating from a remote location in The Hague, far from the affected countries and peoples. One of the key instruments to overcome that obstacle was the Tribunal's outreach programme. In 2000, the Tribunal established the programme, and the Communications Section developed a network of partner organizations in the region, including victims' associations, non-governmental organizations and educational institutions. The outreach programme worked with 50 such organizations on activities to raise awareness and understanding of the Tribunal's work. In one of its most significant initiatives with local communities in the former Yugoslavia, the outreach programme organized a series of five conferences entitled "Bridging the gap". The one-day events, held in towns where some of the most serious crimes were

[209] See paras. 19–20 above.

committed, included candid and comprehensive presentations from panels of Tribunal staff who were directly involved in the investigation, prosecution and adjudication of the alleged crimes. The conferences enabled the Tribunal to present a direct account of its activities to the people most affected by the crimes and allowed them to ask questions and gain a better understanding of the Tribunal's judicial proceedings and judgments.

191. The Communications Section also used a variety of other channels to communicate the Tribunal's work to the general public and specific target groups. This included building a website that provided access to detailed information and documents regarding the Tribunal's work; issuing more than 2,000 press releases and advisories; facilitating hundreds of interviews; developing and extensively using the Tribunal's social media channels and producing dozens of informational publications in at least three, sometimes up to six, languages (English, French, Bosnian/Croatian/Serbian, Albanian, Macedonian and Dutch). In addition, the Communications Section facilitated visits by hundreds of journalists from the region to the Tribunal to report on high-profile hearings, such as initial appearances and judgments. It ensured that regional media representatives were provided with relevant information about the Tribunal's work to facilitate accurate reporting.

192. Since December 2011, the Communications Section has been implementing a youth outreach project aimed at facilitating greater understanding and discussion among young people in the region of the importance of accountability for war crimes. As part of the project, the Communications Section organized five series of lectures and presentations for high school and university students throughout Bosnia and Herzegovina, Croatia, Montenegro, Serbia and the former Yugoslav Republic of Macedonia, reaching more than 10,000 high school and university students and 300 educators. The reporting period saw the final round of the youth outreach project, with a "train the trainers" workshop for high school teachers organized in Croatia to ensure that the project lives on after the closure of the Tribunal.

193. The Registry has facilitated more than 4,500 educational visits throughout the lifespan of the Tribunal, with more than 115,000 students, academics and professionals having visited the Tribunal to receive tailored briefings on its work and achievements. A significant number of visitors were from the former Yugoslavia. Since 2010, the Communications Section has also organized an annual Open Day at the Tribunal, which saw more than 5,000 guests visiting the Tribunal on each occasion.

194. The Communications Section also contributed significantly to the Tribunal's capacity-building efforts. Under the War Crimes Justice Project, the Tribunal, the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe and the United Nations Interregional Crime and Justice Research Institute formed a partnership to promote the transfer of know-how and materials from the Tribunal to national jurisdictions in the former Yugoslavia. Project activities included the production of 60,000 pages of transcripts of the Tribunal's proceedings in Bosnian/Croatian/Serbian, the translation of more than 175,000 words of the Tribunal's Appeals Chamber case law research tool and the development of training materials on international criminal law and international humanitarian law.

195. Since the adoption of the completion strategy, the Tribunal also made legal support staff available to assist national judiciaries in handling war crimes cases, and the Communications Section organized and participated in more than 90 training sessions, workshops, seminars and peer-to-peer meetings reaching more than 8,000 legal professionals from the region. It facilitated dozens of training events and study visits to the Tribunal, aimed at building the capacity of judges, prosecutors, defence counsel and court support personnel to handle complex war crimes cases.

196. As part of the completion strategy, the Communications Section also engaged in activities designed to secure the Tribunal's legacy and to ensure that its work and lessons learned are made available to others. It contributed to six publications on the work of the Tribunal and, starting in 2010, organized six large-scale conferences with more than 1,500 participants, of which two were held in The Hague and four in the former Yugoslavia. For these purposes, the Tribunal created a working group on legacy and outreach. Later, in the last two years of the Tribunal's mandate, the Communications Section assisted in facilitating the "ICTY legacy dialogues" series, which consisted of more than 20 public events, including conferences, lectures, workshops and documentary screenings, to take advantage of precious final opportunities to cement the Tribunal's legacy. A planning committee was tasked with organizing and carrying out these events.

197. The Tribunal considers the establishment of information centres, pursuant to the terms of Security Council resolution 1966 (2010), to be an extremely valuable part of its ongoing legacy. In providing direct access to the entire public archive of the Tribunal, the information centres will constitute an important research, education and information tool. As outlined above,[210] the Communications Section has provided continuous support in that process, in particular playing a key role in the negotiation of relevant memorandums of understanding. While the Tribunal, and, after its closure, the Mechanism, is assisting in their creation, once established the information centres will belong to local actors.

198. Another major achievement of the outreach programme was the production of seven documentaries and 18 short video features on the work of the Tribunal. From its first documentary, "Justice at work", in 2001, which introduced the Tribunal's work, mandate and structure, to the final film, on the genocide in Srebrenica, which will be released in December 2017, the documentaries provide insight into some of the Tribunal's most significant cases and its contributions to the development of international criminal law and justice.

199. Given the experience of the Tribunal in facing prejudice and attacks against its work from within the former Yugoslavia, the importance of a communication strategy and an outreach programme to the success of an international criminal court or tribunal cannot be overstated. Both should be made a core activity from the start. The international community, in particular the European Union, has generously supported the numerous initiatives of the Tribunal's Communications Section and outreach programme. However, it is vital that the outreach programmes of future international courts and tribunals be integrated into the core budget and provided with all resources necessary to successfully carry out their important work.

VI. Conclusion

200. The submission of the present report, the Tribunal's final completion strategy report, marks the completion of the judicial mandate and work of the first international criminal tribunal of the modern age; the ultimate fulfilment of the Tribunal's completion strategy; and the Tribunal's closure in only a few short weeks. The report thus represents a defining moment in international criminal justice and the end of an extremely important chapter, not only for the judges, principals and staff who have served at the Tribunal over the past 24 years, but also for the United Nations and its Member States, the international community more broadly and, most significantly, the countries and peoples of the former Yugoslavia.

[210] See para. 29 above.

201. In order for the myriad lessons of that chapter to be absorbed and the Tribunal's legacy and best practices to be carried forward beyond its closure, the Tribunal trusts that the present report, in conjunction with its past reports and legacy documents, will serve as a useful reference tool for the above-mentioned stakeholders, as well as the courts and tribunals tasked with administering international criminal justice in future.

202. While much can be distilled and learned from the detailed information provided above in relation to the experiences of Chambers and the Registry, the Tribunal wishes to briefly make some additional, overarching points. They are not specific to any organ or section and are offered as further food for thought.

203. First, requiring an institution to fill gaps in its own statute or mandate, for example by having to develop a completion strategy, rules of procedure and evidence or an outreach programme, after its establishment will, as the experience of the Tribunal has shown, likely take considerable time, effort and resources on the part of the institution and potentially lead to delays. While there is much to be said for allowing an institution to respond flexibly as needs arise, and while judicial independence must, of course, always be respected and maintained, the Tribunal considers sufficient guidance and support from the beginning crucial to ensuring the most efficient and effective operations throughout. Moreover, it is essential that a court or tribunal be provided with all of the tools and resources, including staffing, necessary to carry out its functions.

204. Second, gaps in expectations of international criminal courts and tribunals need to be managed and filled, with the support of Member States and other stakeholders. In this respect, it is very important that expectations of what a court of law can, and should, properly achieve be managed from the outset. For example, the Tribunal was not mandated to reconcile the communities affected by the crimes that it adjudicated or to try all persons alleged to have committed crimes during the conflicts of the 1990s; nor was it set up to provide for legal representation or reparations for victims, much as it might have wished to make a difference in all of those areas. This is where having a well-resourced outreach programme, from the beginning of operations and as part of core activity, can play a key role in countering misconceptions and misunderstandings. Similarly, the notion that international criminal trials or appeals may be disposed of cheaply or quickly must be recognized as unrealistic. The hard truth is that cases of the nature, size and scope of those dealt with by the Tribunal necessarily take time and are expensive to run, and they cannot be compared with criminal cases at the domestic level. However, when compared with the spectre of impunity, few would doubt that the price of international criminal justice is worth paying.

205. Third, accountability and transparency in any judicial institution are imperative, as is the ability to remain open to suggestions for change and improvement. This applies across the board, including at the level of judges, who are not above the law and ought to be held accountable for breaches of ethics or professional standards. For those reasons, the Tribunal, although at a very late stage in its existence, adopted the Code of Professional Conduct for the Judges of the Tribunal in July 2016 and regrets not having had the time or resources to develop a disciplinary mechanism. Reporting duties vis-à-vis parent organizations and stakeholders must be conscientiously fulfilled, with evaluations, audits and reviews playing an important role in ensuring the continued openness and efficiency of operations. At the same time, it is true that additional reporting duties can be burdensome and may divert time, attention and resources away from core judicial functions. The Tribunal therefore considers that those responsible for conducting evaluations and reviews of a court or tribunal's work should be familiar with the basic principles guiding a judicial institution. In particular, they should be aware that an international court or tribunal is not simply another "business unit", but rather that its overall purpose, which is the delivery of justice,

must be guided by fundamental tenets of fairness, due process and judicial independence, as well as efficiency.

206. Fourth, the Tribunal considers it crucial that international courts and tribunals be willing to share and learn from each other's experiences and to engage in an open-minded exchange of ideas and information. International criminal justice as a whole can only benefit from such cooperation in the identification of best practices. To the extent that the Tribunal has served as a catalyst for the creation of other international courts and tribunals, the Tribunal trusts that these institutions will continue to build on its legacy by taking on board many of its lessons learned and best practices and by making use of its rich body of substantive and procedural law.

207. Fifth and lastly, just as the provision of adequate tools, resources and guidance is vital for the effective functioning of any judicial institution, there can be no international criminal justice at all without political will and State cooperation. As demonstrated above, a lack of State cooperation or political support has at times hampered the Tribunal's operations and led to delays, thereby also fuelling anti-Tribunal sentiment. At the same time, the Tribunal is mindful that it was established in 1993, during a moment of political optimism and determination that differs markedly from today's global context, and that, throughout the past quarter of a century, it continued to receive the resources required for its functioning. For this, the Tribunal is extremely grateful. It expresses sincere hope that other courts and tribunals will also receive the support and resources that they need to continue the fight against impunity.

208. In reflecting on the conclusion of the Tribunal's mandate and the fulfilment of its completion strategy, it is indeed clear that none of the Tribunal's work or achievements would have been possible without the valuable support, assistance and guidance received by the United Nations and numerous other stakeholders. The Tribunal wishes to thank in this respect its outstanding host country, the Netherlands, for more than 24 years of unwavering support and for providing a safe "home" for the Tribunal in the international city of peace and justice; the United Nations Secretariat, under the capable leadership of the Secretary-General, António Guterres, and those who came before him and believed in the Tribunal; the Office of Legal Affairs, for its critical assistance from the very beginning; the General Assembly, for providing the Tribunal's core budgetary resources and electing its judges; the Informal Working Group on International Tribunals, ably chaired by Uruguay in the 2016–2017 biennium, for its effective engagement and frank advice; the President of the Mechanism, for his continued cooperation in ensuring a smooth transition to the Tribunal's successor body; the European Union, as well as individual States, for their generous voluntary contributions to the Tribunal's activities; and, most importantly, the Security Council and its members, for their ongoing support in, inter alia, guiding the Tribunal's operations and ensuring its continued mandate. As the creator of the Tribunal, the Council has inevitably partaken of the Tribunal's successes and failures and will share in its ultimate legacy.

209. Special and particular thanks must be given to those who have made the greatest contribution to the Tribunal's success, namely, the more than 7,000 staff members, 87 judges, 5 prosecutors and 4 registrars who have served at the Tribunal with such dedication in the years since 1993. It is due only to their superb work, tireless efforts and enduring commitment to the greater cause of justice that the Tribunal has been able to carry out, and conclude, its mandate and will leave behind a legacy of unexpected richness and meaning. While words do not seem adequate to convey the debt of gratitude owed by both the Tribunal and the international community, the Tribunal wishes to commend all staff, judges and principals, past and present, and to thank them once more for their outstanding and honourable service.

210. The Tribunal saves its final acknowledgement for the victims of the conflicts of the 1990s, who have suffered so terribly and lost so much. It was for the victims that the international community came together in 1993 in establishing the Tribunal, and for the victims that the Tribunal fought so hard over 24 years in investigating, prosecuting and adjudicating the crimes within its jurisdiction. Furthermore, without the thousands of victims who were willing to give evidence before the Tribunal, it would never have been able to deliver justice. In closing, therefore, the Tribunal pays tribute to those who gave voice to their experiences with such courage, honesty and resilience, as well as others who still cry for justice in relation to crimes yet to be prosecuted. Their stories and experiences must never be forgotten.

Annex II

[Original: English and French]

Final report of Serge Brammertz, Prosecutor of the International Tribunal for the Former Yugoslavia, provided to the Security Council under paragraph 6 of Security Council resolution 1534 (2004)

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I. Overview

1. The Prosecutor submits the twenty-eighth and final completion strategy report pursuant to Security Council resolution 1534 (2004), covering developments between 16 May 2017 and 30 November 2017.

2. As the present report is the final completion strategy report submitted by the Prosecutor, in addition to a summary of developments during the reporting period, the report also contains a review of the Office of the Prosecutor's implementation of the Tribunal's completion strategy and a summary of key lessons learned.

II. Developments during the final reporting period

A. Update on trials

3. In the *Mladić* case, the Trial Chamber issued its judgment on 22 November 2017.

4. The Trial Chamber convicted Ratko Mladić, former commander of the Main Staff of the Army of the Republika Srpska, on 10 of the 11 counts charged in the indictment, and sentenced him to life imprisonment. The Trial Chamber found that Mladić was guilty for committing genocide, crimes against humanity and war crimes through four joint criminal enterprises. First, Mladić was instrumental in the campaign of ethnic cleansing between 1992 and 1995, the goal of which was to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory throughout Bosnia and Herzegovina. Second, Mladić oversaw a campaign of terror against the civilian population of Sarajevo between 1992 and 1995, during which Bosnian Serb forces deliberately shelled and sniped the civilian population on a daily basis. Third, Mladić significantly contributed to the Srebrenica genocide in July 1995, which had the objective of eliminating the Bosnian Muslims in Srebrenica. Finally, Mladić played a central role in implementing the criminal plan to take United Nations peacekeepers hostage in order to compel the North Atlantic Treaty Organization to abstain from conducting air strikes against Bosnian Serb targets. Any appeal proceedings in this case will be conducted by the Mechanism.

5. The Office of the Prosecutor is satisfied with the Trial Chamber's judgment and the sentence of life imprisonment. Mladić committed crimes that rank among the most heinous known to humankind. He was the Tribunal's most wanted fugitive, and evaded justice for 16 years. With the strong support of the Security Council, the European Union and others, he was finally arrested and brought to trial. His conviction demonstrates that those responsible for the most horrific atrocities can be brought to justice, and vindicates the Council's decision, 24 years ago, to achieve peace through justice.

B. Update on appeals

6. In the *Prlić et al.* case, the Appeals Chamber issued its judgment on 29 November 2017.

7. The Appeals Chamber confirmed the guilt of the six accused and affirmed the sentences imposed at trial. The Appeals Chamber affirmed that the crimes were committed in the implementation of a joint criminal enterprise to ethnically cleanse Bosnian Muslims from claimed territory, with the aim of establishing a Croatian entity in Bosnia and Herzegovina and facilitating the reunification of the Croatian people. The Appeals Chamber further upheld the Trial Chamber's findings that the

six accused shared the common purpose of the joint criminal enterprise and significantly contributed to its realization. In respect of the Office's appeals, the Appeals Chamber allowed a number of the Prosecution's grounds of appeal, finding that the Trial Chamber had erred in acquitting the accused in certain respects, but it declined to enter new convictions on appeal.

8. The Office of the Prosecutor is satisfied with the Appeals Chamber's judgment. The six accused were senior political and military leaders who used their power to implement campaigns of crimes against civilians. They have now been held accountable. However, more senior- and mid-level officials and commanders must still be brought to justice for the crimes proved in this case. The Office of the Prosecutor urges national judiciaries to urgently process additional suspects and secure greater justice for the victims.

C. State cooperation with the Office of the Prosecutor

9. The Office of the Prosecutor continued to rely on the full cooperation of States to successfully complete its mandate, as set out in article 29 of the statute of the Tribunal. The Prosecutor met with officials in Zagreb on 12 and 13 October 2017, in Belgrade on 1 and 2 November and in Sarajevo from 6 to 8 November. Throughout the reporting period, the Office maintained a direct dialogue with governmental and judicial authorities from Serbia, Croatia and Bosnia and Herzegovina. The field offices in Sarajevo and Belgrade, which were administratively transferred to the Mechanism as of 1 January 2017, continued to facilitate the Office's work in Bosnia and Herzegovina and Serbia, respectively.

10. The Office of the Prosecutor continued to have appropriate access to documents, archives and witnesses in Bosnia and Herzegovina, Croatia and Serbia during the reporting period.

11. Cooperation and support from States outside the former Yugoslavia, as well as from international organizations, remains integral to the successful completion of Tribunal cases. Assistance remains necessary to access documents, information and witnesses, as well as in matters related to witness protection, including witness relocation. The Office of the Prosecutor again acknowledges the support it received during the reporting period from Member States and international organizations, including the United Nations and its agencies, funds and programmes, the European Union, the North Atlantic Treaty Organization (NATO), the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe.

12. However, the Office of the Prosecutor deeply regrets that the Tribunal will close with Serbia yet again reported to be in a state of non-cooperation in relation to the arrest of persons indicted for contempt. Serbia's failure over many years to cooperate with the Office of the Prosecutor in arresting fugitives was an immense obstacle to justice and accountability, and one of the primary reasons for the completion strategy being delayed. It was only on the occasion of the arrest of the Tribunal's final fugitive, in 2011, that Serbia demonstrated full cooperation with the Office of the Prosecutor. Since that time, unfortunately, rather than continuing to give the Office its full cooperation, Serbia has instead again failed to demonstrate the political will to cooperate by arresting indictees. It can only be hoped that Serbia will in the coming years return to the path of full cooperation with the Mechanism.

D. Downsizing

13. At the end of 2016, the Office of the Prosecutor had a total of 78 staff members, following the abolition of 23 Professional and 12 General Service posts in 2016. Between 1 January 2017 and 30 June 2017, upon completion of major activities in the *Mladić* and *Prlić et al.* cases, the Office abolished 28 Professional and 8 General Service posts.

14. With the finalization of the *Mladić* and *Prlić et al.* cases, the Office of the Prosecutor abolished 9 Professional and 5 General Service posts on 30 November 2017. On 31 December 2017, the Office will abolish all its remaining posts, namely 1 Under-Secretary-General, 1 Director, 4 Professional and 2 General Service posts.

E. Transition to the Mechanism

15. Resource-sharing between the Office of the Prosecutor of the Tribunal and its Mechanism counterpart continued during the reporting period under the "one office" approach to integrate the staff and resources of the two Offices. All Prosecution staff are available to "double-hat" so they can be flexibly assigned to either Tribunal- or Mechanism-related work depending on operational requirements and their case-related knowledge. Resources of both Offices are being flexibly deployed where needed. During the reporting period, Tribunal Office staff assisted the Mechanism Office in relation to the *Karadžić* and *Šešelj* appeals and the *Stanišić and Simatović* trial, while Mechanism Office staff assisted the Tribunal Office to meet its obligations in the *Mladić* and *Prlić et al.* cases.

III. Implementation of the completion strategy

A. Completion strategy

16. In 2003, by its resolution 1503 (2003), the Security Council endorsed the Tribunal's completion strategy, which set three milestones for the completion of the Tribunal's work. First, the Office of the Prosecutor would complete its investigations by 31 December 2004. Second, the Tribunal would complete its trials by 31 December 2008. Third, the Tribunal would complete its appeals by 2010.

17. The completion strategy foresaw that the milestones would be achieved in part by implementing a two-pronged process, which the Security Council also endorsed. First, the Tribunal would concentrate its activities on the prosecution and trial of the most senior leaders suspected of being most responsible for crimes within the Tribunal's jurisdiction. Second, the Tribunal would refer cases involving intermediary-level suspects to competent national jurisdictions. The second prong would require related activities to reform and strengthen the capacity of such jurisdictions. The Security Council, in resolution 1503 (2003), accordingly called on the international community to assist national jurisdictions, as part of the completion strategy, in improving their capacity to prosecute cases transferred from the Tribunal.

18. Pursuant to Security Council resolution 1534 (2004), the Office of the Prosecutor reported biannually to the Security Council on progress in the implementation of the completion strategy. This final report contains a review and summary of the key topics addressed in the Prosecutor's reports since 2004, and offers some reflections and lessons learned from the Office's efforts.

B. Completion of investigations

1. Overview

19. The first milestone of the Tribunal's completion strategy was for the Office of the Prosecutor to complete its investigations by 31 December 2004. That goal relied entirely on the activities and efforts of the Office of the Prosecutor. It was achieved on time. As reported in the Office's third completion strategy report (S/2005/343), by 31 December 2004, investigations were completed and the last new indictments were presented for confirmation and subsequently confirmed.

20. With the achievement of that milestone, no additional indictments for the crimes set out in articles 2 to 5 of the statute were issued by the Office of the Prosecutor in the remaining years of its mandate. In total, between the commencement of its operations and 31 December 2004, the Office issued indictments for war crimes, grave breaches of the Geneva Conventions, crimes against humanity and/or genocide against 161 accused persons.

21. While formalized in the Tribunal's completion strategy, the Office of the Prosecutor's intention to complete all investigations by the end of 2004 was articulated as early as 1999. It should be noted that the announcement of that initial timeline was contemporaneous with the armed conflict and corresponding commission of crimes under the Tribunal's jurisdiction in Kosovo,[1] while two years later, crimes under the Tribunal's jurisdiction were committed in the former Yugoslav Republic of Macedonia. Those developments added 4 additional new investigations to the 36 investigations that remained in progress and had been identified in 1999. The Office accordingly successfully adhered to its timeline for the completion of investigations, despite significant challenges caused by external factors.

22. In order to achieve that target, the Office of the Prosecutor undertook significant activities in an expeditious manner. In June 2002, the Office had issued indictments against 124 accused persons. The Office further issued indictments against 37 accused persons up to 31 December 2004, representing approximately one quarter of the total number of indictments issued by the Office. That figure does not include the even larger number of investigative targets who were identified, but not indicted because they were not among those suspected of being most responsible for the crimes. Those investigative files were subsequently transferred to national courts for further processing under the Office's category II programme.

2. Targeting those most responsible

23. In accordance with Security Council resolutions 1503 (2003) and 1534 (2004), the final investigations undertaken and completed with the issuance of indictments by the Office of the Prosecutor concerned the most senior leaders suspected of being most responsible for the crimes.

24. The adoption of the completion strategy was not, however, the beginning of the Office of the Prosecutor's policy of targeting high-ranking suspects. Even previously, the Office's investigative and prosecutorial strategy had focused on persons holding a higher level of responsibility or those who had been personally responsible for exceptionally brutal offences. As early as 1995, the Office of the Prosecutor was already investigating targets who were senior commanders and/or officials during the conflicts in Bosnia and Herzegovina and Croatia. For example, when it became aware of an investigation being simultaneously conducted by judicial authorities of Bosnia and Herzegovina into the responsibility of the Bosnian Serb leadership, the Office

[1] All references to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).

formally requested a Trial Chamber to issue a deferral order. The request was granted in May 1995, and was followed on 24 July 1995 by the submission of indictments against Radovan Karadžić and Ratko Mladić, among the most important early indictments against those most responsible for the crimes.

25. By the time the completion strategy was adopted, the investigations of the crimes that had been committed, the so-called "crime base", were well advanced in relation to crimes in Bosnia and Herzegovina and Croatia, particularly the ethnic cleansing campaigns and the Srebrenica genocide. The Office had accordingly already further focused its activities on identifying and building strong cases against high-ranking suspects. This led to indictments against some of the most senior military officers in the armies of the parties to the conflicts, including: Ratko Mladić, the former commander of the Main Staff of the Army of the Republika Srpska (VRS); Dragoljub Ojdanić, the former chief of the General Staff of the Yugoslav Army (VJ); and Ante Gotovina, the former commander of the Split Military District of the Croatian Army. Key political leaders had also been indicted prior to 2003, including: Slobodan Milošević, the former president of the Federal Republic of Yugoslavia; Radovan Karadžić, the former president of the Republika Srpska; Momčilo Krajišnik, the former president of the Bosnian Serb Assembly; Milan Martić, the former president, defence minister and minister of internal affairs of the so-called Serbian autonomous region Krajina/Republic of Serbian Krajina; Biljana Plavšić, a former member of the collective and expanded presidencies of the Republika Srpska; and Nikola Šainović, the former deputy prime minister of the Federal Republic of Yugoslavia.

26. With the adoption of the completion strategy, the remaining investigations were streamlined to exclusively focus on the most senior leaders responsible for the most serious crimes. The Office of the Prosecutor conducted a comprehensive review of its investigations and, having identified the suspects bearing the greatest responsibility and who therefore should be prosecuted at the Tribunal, established two priority lists. List A concerned investigations involving the most serious crimes and the highest level perpetrators. A total of 17 investigations, involving 42 suspects, were initially identified as meeting those criteria. The list was regularly reviewed as investigative activities progressed, and was then reduced to 13 investigations, involving 35 suspects. List B concerned investigative targets who would be referred or otherwise transferred to national courts for further proceedings.

27. By 31 December 2004, the investigations completed following the adoption of the completion strategy led to the issuance of a final series of indictments against additional political, military and police leaders most responsible for the crimes, including: Rasim Delić, the former commander of the Main Staff of the Army of Bosnia and Herzegovina; Ivan Čermak and Mladen Markač, former senior Croatian generals; six senior members of the Bosnian Croat leadership, Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić; Ramush Haradinaj and Lahi Brahimaj, former senior commanders of the Kosovo Liberation Army; Momčilo Perišić, the former chief of the General Staff (VJ); Nebojša Pavković, the former commander of the Third Army (VJ); Milan Gvero and Zdravko Tolimir, former assistant commanders of the Main Staff (VRS); Mićo Stanišić, the former minister of internal affairs of the Republika Srpska; Milan Babić, the former president of the Republic of Serbian Krajina; and Goran Hadžić, the former president of the Government of the Serbian autonomous region of Eastern Slavonia, Baranja and Western Srem and subsequently president of the Republic of Serbian Krajina.

28. As consistently reported by the Office of the Prosecutor to the Security Council, the achievement of the first milestone did not represent the cessation of all investigative activities. 31 December 2004 marked the completion of investigations

that would lead to the issuance of new indictments. However, further investigations continued in the cases that had been indicted by that date, including investigations related to evidence and witnesses presented by the accused in their defence. It is therefore important to appreciate that skilled investigators and other staff such as criminal, political and military analysts of the Office of the Prosecutor remained essential to the successful prosecution of senior accused, in the pre-trial, trial and appeal stages of the proceedings.

3. Conclusion

29. As a milestone of the completion strategy, the completion of investigations by 31 December 2004 was successfully achieved. Among many others, a few lessons can be highlighted.

30. First, establishing a deadline for the completion of investigations leading to new indictments proved to be a rather successful measure for establishing parameters for the completion of judicial activities. The 31 December 2004 deadline was established five years earlier, endorsed by the Security Council and successfully achieved. This was despite the fact, as previously noted, that two additional armed conflicts arose contemporaneously or in the interim, during which crimes under the Tribunal's jurisdiction were committed, requiring the opening of additional investigations. The Office of the Prosecutor was able to plan its work based on clear targets and put in place appropriate strategic and managerial measures to guide and monitor implementation. Ultimately, the success in meeting the deadline may be attributed in large measure to the fact that responsibility clearly rested with the Office of the Prosecutor, and that the Office of the Prosecutor would have been held accountable had the deadline not been met.

31. Second, linking the completion of investigations by the Office of the Prosecutor to increased activity at the national level was essential for securing legitimacy and avoiding impunity. The investigations conducted by the Office identified hundreds if not thousands of suspects, only a small number of whom would be prosecuted by the Tribunal as bearing the greatest responsibility. The presumption that the remaining investigations would be referred and transferred to national courts alleviated concerns that the end of the Tribunal's work would lead to impunity. In this regard, then, it would have been helpful and consistent with the completion strategy had the Security Council explicitly decided by a resolution that national authorities were responsible for processing investigations conducted by the Office of the Prosecutor and referred or otherwise transferred to them. This would have ensured greater clarity that national authorities are under an international legal obligation to process those crimes, consistent with the completion strategy.

32. Third, the deadline for completing investigations by the end of 2004 required the Office of the Prosecutor to adjust its investigative strategies, which affected later prosecutions. From its early years, the Office pursued a combination of bottom-up and top-down investigations for many serious crimes committed in Bosnia and Herzegovina and Croatia, in particular as regards the ethnic cleansing campaigns and Srebrenica genocide. The combined strategy enabled the Office to extensively investigate the crimes and obtain strong evidence, establish how and the context in which the crimes were committed, test the evidence in the courtroom and hold lower- and mid-level perpetrators accountable, before commencing the more difficult leadership prosecutions. The ultimate success of this approach can be seen in the extent of the crimes committed that were prosecuted, the Office's rate of successful prosecutions, particularly of senior leaders, and the severity of sentences imposed.

33. Conversely, with the 2004 deadline for completing investigations and new indictments, the Office of the Prosecutor had to adopt a largely top-down approach to

investigating crimes committed in Kosovo and the former Yugoslav Republic of Macedonia, as well as other crimes committed in Bosnia and Herzegovina and Croatia. For those crimes, investigations were immediately focused on the senior leadership, who were prosecuted in the only cases brought by the Office for those crimes. While the top-down approach was successful as the sole approach in some circumstances, it was not in others, such as the responsibility of senior officials of the Kosovo Liberation Army for crimes committed by their subordinates. More specifically, given the widespread atmosphere of witness intimidation that affected the latter cases, a combined bottom-up and top-down approach might have achieved more successful results. Unfortunately, such an approach was excluded by the Tribunal's completion strategy and the Security Council's instructions in resolutions 1503 (2003) and 1534 (2004), as well as rule 28 of the Tribunal's Rules of Procedure and Evidence as amended by the judges, over the Office of the Prosecutor's objections.

34. In retrospect, a more nuanced approach to the completion of investigations and a focus on those most responsible for the crimes may have been warranted. While the end of 2004 was appropriate for the completion of investigations of crimes in Bosnia and Herzegovina and Croatia, it may have been preferable if the completion strategy had allowed for the possibility that investigations of crimes in Kosovo and the former Yugoslav Republic of Macedonia would require additional time, given that they were initiated six and eight years later, respectively. It also could have been helpful to allow the Office of the Prosecutor to bring a limited number of indictments against low-level or other perpetrators, as necessary, to support prosecutions of those most responsible for the crimes.

C. Cooperation: fugitives and access to evidence

1. Overview

35. The Office of the Prosecutor's completion strategy reports have addressed two issues more than any other: the need to obtain State cooperation for access to evidence and arrests of indictees, and the challenges that have arisen in both respects. Those issues were consistently identified as a critical risk to the achievement of the Tribunal's completion strategy. In the end, the final fugitive was not arrested until 2011, three years after the date initially projected for the completion of the Tribunal's trials.

36. Without a police force or law enforcement body of its own, the Office of the Prosecutor depended entirely on the cooperation of States to gain access to crime sites and witnesses, obtain relevant evidence from State bodies and their archives, conduct seizures and arrest indictees for transfer to the Tribunal. State cooperation was also required for related matters such as witness protection and witness relocation. In turn, Member States had an obligation to cooperate with the Tribunal under Chapter VII of the Charter of the United Nations.

37. It must be emphasized that the Office of the Prosecutor enjoyed and gratefully acknowledges strong cooperation from many Member States and international organizations, including the United Nations and its agencies, funds and programmes, the Office of the High Representative for Bosnia and Herzegovina, the European Union, NATO, OSCE, the International Criminal Police Organization (INTERPOL) and the Council of Europe. Member States and international organizations provided the Office of the Prosecutor with access to evidence and intelligence that was essential to the successful investigation and prosecution of accused persons and the Office's efforts to locate fugitives from justice. In addition, Member States, particularly in Europe, provided extensive assistance to the Office in securing access to witnesses

and, subsequently, their protection before and after providing testimony to the Tribunal. Of course, the Netherlands as host State provided daily support in an immense number of critical areas and played a decisive role in securing cooperation and ultimately the arrests of the final fugitives. Without that cooperation, the Office of the Prosecutor could not have succeeded in its mandate.

38. At the same time, obtaining cooperation from the countries of the former Yugoslavia, particularly Bosnia and Herzegovina, Croatia and Serbia, proved far more challenging. Responses to requests for access to evidence were often delayed or the requests were denied. Wartime archives were hidden, destroyed or otherwise difficult to access. Government officials, the media and others created an atmosphere that was not conducive to potential witnesses freely providing evidence and testimony, while States also blocked access to witnesses on some occasions.

39. In this regard, it was clear that cooperation would often be more forthcoming in cases against accused persons from other ethnic groups or countries, while obtaining cooperation was difficult if not impossible in cases against accused persons from the same ethnic group or country. Cooperation in one area would then be used to deny, minimize and ignore non-cooperation in another.

40. The difficulties experienced by the Office of the Prosecutor in obtaining State cooperation were most evident in the search for fugitives. None of the 161 persons indicted by the Tribunal remain at large today. However, during the first years following the creation of the Tribunal, the execution of an arrest warrant was particularly problematic. It took two years to secure a first arrest. In 1996, three years after the creation of the Tribunal, four indictees were in the Tribunal's custody. By mid-1997, only seven indictees were in custody, while more than 50 were at large. In total, it took 18 years to secure the arrest and transfer of all indicted persons.

41. With all cooperation matters in general, and non-cooperation in relation to the fugitives in particular, the primary challenge was the absence of political will. For many years, fugitives lived openly, secure in the knowledge that the Tribunal's arrest warrants would not be executed. Fugitives were informed of sealed indictments against them so that they could evade capture. Fugitives received support from networks that maintained links with State authorities. In some situations, the absence of political will could be linked to the fact that the fugitives were considered heroes by segments of the population. Following the indictment of the Bosnian Serb military and political leaders Ratko Mladić and Radovan Karadžić in 1995, the Bosnian Serb authorities heavily obstructed the work of the Tribunal. Croatian and Serbian authorities initially adopted similar strategies with high-profile accused persons. In nearly all situations, fugitives were supported by a more general policy of non-cooperation with the Tribunal.

42. It is important to also acknowledge that the international community at times did not provide full support for the apprehension of fugitives. This was particularly the case in the immediate aftermath of the conflicts. Unfortunately, accountability was often seen as a threat to peace, bringing a risk of reopening the conflict, with peace understood as a higher priority. As a result, fugitives were not arrested immediately upon issuance of an indictment, and some eventually remained at large for more than a decade, including Ratko Mladić and Radovan Karadžić.

43. In retrospect, although many factors contributed to the successful record of the Tribunal, the Office of the Prosecutor pursued key strategies that had an impact. Most importantly, the Office sought and obtained political and diplomatic support from the Security Council and Member States. At different stages, this support was concretely demonstrated and led to specific results, as can be seen in the arrests conducted by international peacekeeping forces and the policy of conditionality. In addition, the

Office established a dedicated fugitive tracking unit and adapted its fugitive tracking efforts to changing circumstances.

2. Political and diplomatic support

44. Over two decades of addressing non-cooperation issues, the most important lesson is clear: with strong political and diplomatic support from the international community, justice can be achieved, but when support for accountability is low on the agenda, non-cooperation is an almost insurmountable obstacle.

45. For all cooperation issues, involving both access to evidence and the arrest of fugitives, the Office of the Prosecutor began by making specific requests to the concerned State and undertaking negotiations to address questions or challenges that arose. While insisting that positive responses must be provided, the Office worked with authorities to address any legitimate concerns and agree on timing, methods and what was needed for a positive response. In many instances, direct discussions between the Office and State authorities successfully resolved issues and led to the requested cooperation being provided.

46. Unfortunately, significant issues still arose with regard to responses by State authorities that were not to the Office's satisfaction. For example, Serbia and Montenegro, and later Serbia, proved through their behaviour over many years that they were simply unwilling to execute the Tribunal's arrest warrants. In Bosnia and Herzegovina, Croatia and Serbia, there were a number of instances in which access to evidence, particularly archives, was unduly delayed and insufficient, creating strong doubts about the genuine willingness of the authorities to cooperate with the Tribunal.

47. When direct engagement by the Office of the Prosecutor failed to secure the necessary cooperation, the Office would accordingly inform the Security Council, the European Union and Member States. The Office explained concretely what cooperation was being requested, the issues that had arisen and its assessment that cooperation was inadequate. Concerned Member States gave political and diplomatic support to the Office by then discussing these matters with the concerned State, both bilaterally and in such multilateral forums as the Security Council and the Council of Foreign Ministers of the European Union. The public pressure that was generated succeeded in a number of instances in persuading State authorities to rectify their non-cooperation and respond to the Office's requests in a satisfactory manner.

48. A notable instance in which the Office of the Prosecutor obtained needed cooperation through a combination of direct negotiations and placing challenges on the diplomatic agenda was in securing the agreement of troop-contributing countries for international peacekeeping forces to execute the Tribunal's arrest warrants. Initially, there was no political will among troop-contributing countries for international forces to execute the Tribunal's arrest warrants. There were strong sentiments that arrests could spark renewed conflict in Bosnia and Herzegovina and undermine efforts to restore peace in the region. It was also believed that international forces should maintain their neutrality and not intervene in disputes between the Office and the country in which the forces were present. These concerns directly influenced the behaviour of peacekeeping contingents. Although the North Atlantic Council of NATO decided in December 1995 that the personnel of the Multinational Military Implementation Force (IFOR), and later of the Stabilization Force (SFOR), deployed in Bosnia and Herzegovina "should detain any persons indicted by the International Criminal Tribunal who come into contact with IFOR in its execution of assigned tasks", commanders in the field initially interpreted this mandate very narrowly, especially when it came to senior suspects. This led to notorious examples

of international forces seemingly intentionally avoiding coming into any contact with fugitives so as to avoid having to conduct arrests.

49. The Office of the Prosecutor undertook extensive engagement and negotiations with troop-contributing countries to explain the urgent need for international forces to make arrests. As a result of those negotiations, the Office explored practical ways of addressing concerns and encouraging arrests. For example, rule 59 bis in the Rules of Procedure and Evidence was adopted in January 1996, and enabled the Prosecutor to transmit arrest warrants to international forces, to be executed on the territory of a country of the former Yugoslavia. At the same time, the Office also raised the matter publicly and called on the international community to take the initiative in securing arrests, including in reports to the Security Council and to the Peace Implementation Council for the General Framework Agreement for Peace in Bosnia and Herzegovina.

50. That strategy began to achieve results. In June 1997, international forces in Eastern Slavonia conducted the first arrest operation, based on a warrant the Office of the Prosecutor had forwarded to the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium. A month later, Stabilization Force troops in the Republika Srpska arrested a second indictee, without this resulting in unrest or threats to peace. Those initial successes demonstrated that concerns about the risk to peace were misplaced and quickly helped to build further willingness and momentum among troop-contributing countries. 1997 marked a critical turning point, demonstrating agreement and a new determination on the part of international organizations and States to provide assistance to the Tribunal. As arrests continued, there was a further beneficial effect in prompting some fugitives to turn themselves in voluntarily, once it became clear that international forces would execute arrest warrants. Between October 1997 and August 1998 alone, a total of 19 persons indicted by the Tribunal were either apprehended or surrendered voluntarily to the Tribunal. By mid-1998, there were already 30 indictees in the Tribunal's Detention Unit, almost four times as many as the year before. This immense progress in securing the arrest and surrender of fugitives was thus largely the result of increased cooperation by international forces, and enabled the Tribunal to commence important trials.

51. Nonetheless, while negotiations combined with political and diplomatic support encouraged countries in the former Yugoslavia to cooperate with the Office of the Prosecutor in a number of areas, serious non-cooperation continued, particularly with regard to the arrest of fugitives. State authorities in Serbia openly informed the Office that they were not willing to conduct any arrests, including of indictees living openly, such as Generals Lukić, Pavković and Lazarević. Croatian authorities failed on a number of occasions to demonstrate a genuine willingness to locate and arrest Ante Gotovina.

52. In such circumstances, the Tribunal's Rules of Procedure and Evidence provided for the formal referral of a State to the Security Council for non-cooperation. This step was taken on a number of occasions. Unfortunately, however, such formal referrals did not often produce the desired change in behaviour, and while the Security Council reiterated its calls for referred States to cooperate, those calls were not backed by sanctions.

53. Bilateral conditionality policies, however, were successful in persuading countries in the former Yugoslavia to more fully cooperate with the Office of the Prosecutor. Conditionality policies involved linking cooperation with the Tribunal to the provision of benefits to countries in the former Yugoslavia. A clear early instance of conditionality was the legislation adopted by the United States of America that conditioned aid to the Federal Republic of Yugoslavia on cooperation with the Tribunal, which led to the arrest of Slobodan Milošević. As applied by the European Union, linking cooperation to accession, conditionality had its greatest impact,

directly leading to the arrests of all remaining fugitives and full cooperation in access to evidence.

54. The prospect of membership in the European Union proved to be a powerful incentive to persuade countries of the former Yugoslavia to meet their international obligations. From as early as 1995, the European Union began to link assistance to these countries to their cooperation with the Tribunal. As these countries increasingly expressed their firm desire for European Union membership, the linkage to issues related to the Tribunal strengthened. Full cooperation with the Tribunal was then specifically included as part of the stabilization and association process for countries of the former Yugoslavia seeking European Union membership. In 2002 in Copenhagen, the European Union agreed to a strategy defining the conditions for the countries of the former Yugoslavia to proceed in the accession process, with full cooperation explicitly specified as a key condition.

55. At each step of the accession process, the European Union evaluated the level of cooperation of the concerned State with the Tribunal, primarily through the assessments provided by the Office of the Prosecutor. On some occasions, when the level of cooperation was considered inadequate, European Union member States took difficult but courageous and far-sighted decisions to underline their expectation of full cooperation. For example, accession talks with Croatia were postponed in March 2005 owing to Croatia's failure to hand over Ante Gotovina to the Tribunal. Similarly, the Stabilization and Association Agreement with Serbia was not signed in May 2006, as originally planned, owing in large part to non-cooperation with the Tribunal.

56. The linkage between accession and full cooperation had a clear impact on the behaviour of the concerned States. Serbia reversed its policy of non-cooperation, and some well-known fugitives were transferred to the Tribunal through a programme of "voluntary surrender", although other fugitives remained at large. Croatia's cooperation in the efforts to locate and arrest Ante Gotovina also measurably improved.

57. The arrest of Ratko Mladić is perhaps the clearest example of how the European Union's conditionality policies secured cooperation. Over a number of years, the prospect of European Union membership prompted Serbian authorities to deliver more and more fugitives and improve cooperation in relation to access to evidence. But Ratko Mladić — one of the Tribunal's most wanted fugitives — remained a national war hero, and there was no political will to locate him and disrupt his support networks. The Office of the Prosecutor, which was deeply engaged with Serbian authorities tasked with locating Mladić, repeatedly gave negative assessments of Serbia's cooperation, which at times led the European Union to bring the accession process to a temporary halt. When these measures did not secure the necessary cooperation, the European Union reinforced the conditionality policy. In October 2010, the European Union expressly stated that the best proof of Serbia's cooperation with the Tribunal would be the arrest of the two final fugitives, Ratko Mladić and Goran Hadžić. For the first time, full cooperation was specifically tied to the arrest of specific fugitives.

58. The crucial turning point came in May 2011. The Office of the Prosecutor submitted its most critical report to the Security Council, noting that the Serbian strategy for apprehending the fugitives was "comprehensively failing". The Office called for a "new, significantly more rigorous approach" as a matter of urgency. Shortly after, Serbian authorities announced the arrest of Ratko Mladić in Serbia. The arrest of the last fugitive, Goran Hadžić, followed soon thereafter. Recognizing that Serbia had finally met the condition of full cooperation, in February 2012 the European Union granted candidate status to Serbia.

59. Conditionality policies accordingly produced concrete, notable results that in all likelihood would not have been achieved otherwise. The arrest of Ratko Mladić is one of the more dramatic examples, but many fugitives were only arrested or voluntarily surrendered because cooperation with the Tribunal was linked to other benefits. Likewise, the success of conditionality policies is a demonstration of the more general point that cooperation can only be ensured through the political and diplomatic support provided by the Security Council, other international organizations, such as the European Union, and Member States.

3. Fugitive tracking unit

60. Internally, one of the most important steps taken by the Office of the Prosecutor to support the search for fugitives was the establishment of a small, expert fugitive tracking unit. Over its history, the tracking unit performed numerous functions depending on the changing circumstances locally and internationally. Among the most important functions, the tracking team: (a) acted as focal point for receiving and analysing intelligence from States and other bodies who were willing to share it with the Office of the Prosecutor; (b) cultivated sensitive sources who could provide information about the likely whereabouts of the fugitives; (c) monitored the activities of agencies and authorities in the region of the former Yugoslavia; and (d) coordinated the work of agencies in the territories where the fugitives were suspected of hiding so as to promote effective tracking and arrest strategies.

61. Although arrests of the Tribunal's indictees could only be carried out by State or international authorities, the Office of the Prosecutor quickly realized that few results would be achieved if it simply waited for others to act. Dependence on State or international authorities would mean that arrests would be governed by the agenda and interests of those authorities. By establishing its own tracking and intelligence-gathering capability, the Office would be able to proactively identify leads and provide them to authorities for action, while also enabling the Office to exercise oversight of tracking and arrest operations.

62. During the initial years, when the focus was on arrests by international forces, the tracking unit focused primarily on liaising with a variety of information providers and key counterparts. By building trust with information providers, the Office was able to ensure greater sharing of intelligence and follow-up. Stronger relationships with counterparts such as the Office of the High Representative for the Implementation of the Peace Agreement on Bosnia and Herzegovina, NATO and the European Union-led peacekeeping force (EUFOR) ensured that action could be immediately taken, whether in conducting arrests or in addressing obstruction. Those relationships were also an important part of building political will and support from troop-contributing countries for international forces to conduct arrests.

63. As arrests of most fugitives proceeded, the tracking unit's orientation shifted to focus more on cooperation with police and other services in the region in the search for the remaining fugitives, all of whom were individuals with high profiles. Particularly at the outset, the tracking unit was required to monitor the efforts of those national services and make assessments thereof. While commitments to search for and arrest the fugitives had been made by governments, they were not translated into efforts on the ground. In reviewing strategies and activities, the tracking unit assessed in a number of instances that promising leads were not being followed, intelligence that was provided by the tracking unit was not acted upon in a timely manner and there was unwillingness to pressure support networks, some of which had links to state authorities. It was only through this detailed engagement that the Office of the Prosecutor was able to point to concrete flaws in support of its assessment that non-cooperation in the search for the fugitives continued.

64. At the same time, the tracking unit continued to seek to improve its cooperation with regional counterparts and support their activities. As those efforts began to generate results, the approach of the tracking team shifted to a more collaborative framework. The tracking unit's approach shifted, from exposing the deliberate failure of authorities to arrest fugitives, to working with them as true partners.

65. That improved collaboration was facilitated by the establishment of national institutions responsible for coordinating cooperation with the Office of the Prosecutor. For example, in 2006 Serbia established an action team in charge of tracking fugitives. Its membership included all essential interlocutors, including the Chairman of the National Council for Cooperation, the war crimes prosecutor, key security officials such as the chiefs of intelligence services, the police and the national security adviser, as well as the Office of the Prosecutor in an ex officio role. That body not only facilitated internal coordination between different services, but also relations with the Office of the Prosecutor. The action team played a key role in coordinating tracking efforts and securing arrests.

66. At the same time, regional cooperation between relevant authorities of Bosnia and Herzegovina, Croatia, Montenegro and Serbia also improved beyond recognition, in some measure owing to the efforts of the tracking unit. Recognizing that, while fugitives moved across borders, tracking activities did not, the tracking unit prioritized improving regional cooperation. The tracking unit functioned as a neutral facilitator, convening joint meetings with services from throughout the region and working to build trust between them. The progressive trust relationship that developed in turn led to information being passed on more quickly and in more complete form, both to the tracking unit and among the respective agencies.

67. With the final fugitives, the tracking unit's role was providing support to Serbian authorities and removing obstacles to their efforts. As a result, when the political will to conduct arrests was generated through the Office's diplomatic activities, those authorities were able to act quickly on intelligence and execute the arrests.

68. Looking back on the Office of the Prosecutor's experience, there is no doubt that the establishment of the tracking unit was essential to the arrest of all fugitives. The Office had personnel on the ground, monitoring information in real time and engaging closely with the regional authorities, both at the political and working levels. As a result, the Office was able to adopt a proactive, coordinated and effective approach, rather than simply waiting for State and international authorities to conduct arrests as and when they were willing.

4. Conclusion

69. The achievement of the Tribunal's completion strategy depended on the arrest of fugitives. When the Prosecutor submitted the first completion strategy report in May 2004, 20 fugitives were at large. By November 2005, with diplomatic support and the efforts of the tracking unit in coordination with national and international partners, 13 fugitives had been arrested. Ante Gotovina was then arrested in December 2005, and Zdravko Tolimir and Vlastimir Đorđević were arrested in June 2007. Thanks to the efforts of the Serbian National Security Council and action team, Stojan Župljanin and Radovan Karadžić were finally arrested in June and July 2008, respectively. Unfortunately, it was not until 2011, three years later, that the last fugitives, Ratko Mladić and Goran Hadžić, were finally apprehended and brought to justice.

70. The Office of the Prosecutor succeeded in accounting for all fugitives, a record that no other international criminal tribunal has achieved. Yet it took 18 years. The delay in arresting all fugitives inevitably delayed the implementation of the completion strategy.

71. In retrospect, the ultimate conclusion that can be drawn from the Office of the Prosecutor's experiences is that success would not have been possible without a proactive approach at both the diplomatic and operational levels. Recognizing that State cooperation was not forthcoming, the Office advocated for greater diplomatic engagement by the international community and supported the European Union's conditionality policy to ensure that the arrest of the final high-profile fugitives remained on the agenda. Those efforts, and the results that were achieved, clearly demonstrate that chances of success will be greater if the international community has a clear and consistent policy agenda concerning countries suspected of harbouring international fugitives. In support of those diplomatic efforts, the Office further established a dedicated tracking unit to work with national authorities in the region and generate informed assessments of whether progress was being made. Had the Office of the Prosecutor simply relied on international legal obligations to ensure cooperation, it is not unreasonable to assume that fugitives would still be at large today.

72. The Office of the Prosecutor's successful record represents an important achievement for international criminal justice and the international community at a time when fugitives present a major challenge for other international criminal courts. It shows that, when there is political will, war crimes, grave breaches of the Geneva Conventions, crimes against humanity and genocide can be punished. But most importantly, the arrest of all fugitives realizes the commitment that the international community made to the victims. So long as the fugitives remained at large, it was difficult for the victims to move forward. Now, those most responsible for the crimes committed during the conflicts in the former Yugoslavia have been brought to justice, providing the victims with a long overdue opportunity for some measure of redress.

D. Prosecuting those most responsible for the crimes

1. Overview

73. The second and third milestones in the implementation of the completion strategy were the completion of trial work by the end of 2008, and the completion of appeals proceedings by 2010. In implementing the first prong of the completion strategy, the Tribunal would concentrate its efforts on the prosecution and trial of the most senior leaders suspected of being most responsible for crimes within the Tribunal's jurisdiction (see para. 17 above).

74. In order to support progress towards those milestones, the Office of the Prosecutor and the judges identified a number of steps that could be taken to expedite the completion of the Tribunal's final trials and appeals. One such key measure was the Office's joinder of related cases, which led to the so-called mega-trials. A second set of measures concerned the scope of the indictments brought by the Office, which involved reviewing and potentially reducing the number of counts and crimes charged to promote shorter and more efficient trials. Third, the Office would seek to reduce the time required to hear its evidence through a number of related steps, including increasing the use of written evidence and limiting the number of witnesses in total.

75. Other steps were also identified that depended more on the management of cases by the judges. With regard to the trial phase, among other measures, judges would seek to expedite proceedings by inviting or directing the Office of the Prosecutor to further reduce the scope of the indictments. Judges would also more actively manage the length of the parties' cases by imposing strict time limits on the Office of the Prosecutor and the defence. With regard to the appeal phase, the judges would seek to further reduce the length of appellate proceedings.

76. The Office of the Prosecutor regularly reported on the progress of trials and appeals in its completion strategy reports. Relevant information regarding two primary categories of cases, the mega-trials and the major fugitive trials, is summarized below as indicative of the Office's activities towards the achievement of the second and third milestones of the completion strategy, namely, the completion of trial work by the end of 2008 and the completion of appeals proceedings by 2010.

2. Mega-trials

77. In line with the completion strategy, the Office of the Prosecutor sought to join as many accused as possible into single trials for organized campaigns of crimes. This led to the so-called mega-trials: six or more senior political and military leaders most responsible for the crimes prosecuted in one case. In principle, it was hoped that joinder of related accused persons into mega-trials would reduce the total time and resources required to complete the proceedings against a large number of accused. Efficiency gains would be realized in particular by allowing evidence on the crimes to be introduced only once in relation to all the accused. At the same time, there were concerns that large trials would be unmanageable in practice. Ultimately, the Office prosecuted three mega-trials for organized campaigns of crimes committed in Kosovo (*Milutinović et al.*), Srebrenica (*Popović et al.*) and territory in Bosnia and Herzegovina declared as the Bosnian Croat entity Herceg-Bosna (*Prlić et al.*). In prosecuting the mega-trials, the Office would also implement other measures to reduce the time required to complete the cases.

Kosovo mega-trial: *Milan Milutinović et al.* case (later *Nikola Šainović et al.*)

78. The first multi-leadership case completed by the Tribunal was the *Milan Milutinović et al.* case (later referred to on appeal as the *Nikola Šainović et al.* case) involving six high-ranking officials and officers of the Federal Republic of Yugoslavia, the Yugoslav Army (VJ) and the police, for war crimes and crimes against humanity committed in Kosovo. Milan Milutinović, the former president of the Republic of Serbia; Nikola Šainović, the former deputy prime minister of the Federal Republic of Yugoslavia; Dragoljub Ojdanić, the former chief of the General Staff (VJ); Nebojša Pavković, the former commander of the Third Army (VJ); Vladimir Lazarević, the former commander of the Priština Corps (VJ); and Sreten Lukić, the former head of the Serbian Ministry of Internal Affairs in Kosovo, were prosecuted for the ethnic cleansing of 800,000 Kosovo Albanians between March and June 1999.

79. The Trial Chamber issued its judgment on 26 February 2009, convicting five of the six accused. Nikola Šainović, Nebojša Pavković and Sreten Lukić were convicted of participating in a joint criminal enterprise whose objective was to displace hundreds of thousands of Kosovo Albanians, through a widespread campaign of terror and violence, so as to change the demographic balance of Kosovo, thus ensuring its continued control by authorities of the Federal Republic of Yugoslavia/Serbia. In confirming the existence of a joint criminal enterprise, the Trial Chamber relied on compelling evidence presented by the Office of the Prosecutor of a discernible pattern of displacement in 13 municipalities in Kosovo, which included attacks and shelling of towns and villages, torching of Kosovo Albanian homes, the destruction of religious monuments, detention, murders, sexual violence, harassment and the systematic confiscation and destruction of identity documents belonging to Kosovo Albanians. Nebojša Pavković was also convicted of persecution committed through sexual assaults. Dragoljub Ojdanić and Vladimir Lazarević were convicted of aiding and abetting deportation and inhumane acts (forcible transfer) as war crimes and crimes against humanity. Milan Milutinović was acquitted of all charges against him.

80. The trial commenced on 10 July 2006 and lasted for 285 trial-days. The prosecution case closed on 1 May 2007, less than a year after the start of the trial and

after only 127 trial-days of evidence. In that time, the prosecution introduced 117 witnesses and 1,455 exhibits. The defence case commenced on 6 August 2007 and closed on 16 May 2008, during which the six accused, in their defence, introduced a total of 123 witnesses and 2,896 exhibits. The closing arguments were presented in August 2008 and were followed by the issuance of the trial judgment six months later, in February 2009. In total, the trial took less than three years and required 1,087 hours of court time, of which 36 per cent was used by the prosecution.

81. The completion of the first mega-trial was an important achievement for the Office of the Prosecutor, demonstrating its ability to prosecute multi-leadership cases effectively and efficiently through joinder of the cases against senior officials involved in the same crimes. The large scope of this case and the crimes prosecuted must be emphasized, ranging across 13 municipalities in Kosovo and involving the senior leadership of the political authorities, military and police. To prosecute such a large case in less than a year, the prosecution limited the scope of the indictment, in that only a representative sample of crimes in a select number of municipalities were prosecuted, and made effective use of written evidence in lieu of oral testimony. The trial judges also actively managed the presentation of evidence by the parties, placing time limits on the prosecution case and further restricting the amount of evidence that could be led on certain counts in the indictment.

82. Appeal proceedings required another five years. In January 2014, the Appeals Chamber issued its judgment, partially granting the Office of the Prosecutor's appeal inter alia in relation to the acquittal of four high-ranking Serbian officials for persecution based on sexual assaults. The Appeals Chamber found that Nikola Šainović and Sreten Lukić were criminally responsible for sexual assaults, as such crimes had been reasonably foreseeable to them in the course of the violent campaign to forcibly displace the Kosovo Albanian population. The Appeals Chamber further extended the criminal responsibility of Nebojša Pavković for sexual violence in Priština. The Appeals Chamber however exercised its discretion not to enter convictions regarding those crimes. The Appeals Chamber also granted the appeals of some of the accused, in part.

83. Notices of appeal were filed in May 2009. Appeal briefing was completed in November 2009, with the filing of the parties' respective reply briefs. The appeal hearing was held in March 2013 and the appeal judgment was rendered in January 2014.

84. This mega-trial also demonstrated the critical risk posed by the non-arrest of fugitives to the achievement of the completion strategy's second and third milestones, as originally anticipated. In addition to the six accused prosecuted in *Milutinović et al*., the Office of the Prosecutor intended to also join the case against Vlastimir Đorđević, the former assistant minister of the Serbian Ministry of Internal Affairs and chief of the Public Security Department of the Ministry of Internal Affairs. However, Đorđević was not arrested until 2007, following the commencement of the *Milutinović et al.* trial. As Đorđević was a senior leader suspected of bearing the most responsibility for the crimes, the case against him was not suitable for transfer to national courts, and would be prosecuted by the Tribunal, adding to the judicial workload and clearly preventing the completion of all trials by the end of 2008.

85. Nonetheless, despite the need to conduct a second trial for the same crimes, the Office of the Prosecutor took steps to expedite the proceedings against Đorđević. The trial began on 27 January 2009. The prosecution completed the presentation of its evidence on 28 October 2009, only eight months later. The defence case began on 30 November 2009 and was completed on 20 May 2010. Closing arguments were held in July 2010, and the trial judgment was delivered on 23 February 2011, so that the trial phase was completed in little more than two years. Appeals proceedings were

completed in three years. Đorđević was convicted at trial, which was affirmed on appeal.

Srebrenica mega-trial: *Vujadin Popović et al.* case

86. The second multi-leadership case completed by the Tribunal was the *Vujadin Popović et al.* case, involving seven high-ranking members of the Army of the Republika Srpska (VRS) and the Ministry of Internal Affairs of the Republika Srpska for war crimes, crimes against humanity and genocide committed in Srebrenica. Vujadin Popović, the former chief of security of the Drina Corps (VRS), Ljubiša Beara, the former chief of security of the Main Staff (VRS), Drago Nikolić, the former chief of security for the Zvornik Brigade (VRS), Radivoje Miletić, the former chief of operations and training administration of the Main Staff (VRS), Vinko Pandurević, the former commander of the Zvornik Brigade of the Drina Corps (VRS), Ljubomir Borovčanin, former officer of the Ministry of Internal Affairs, and Milan Gvero, the former assistant commander for morale, legal and religious affairs of the Main Staff (VRS), were prosecuted for the murder of over 7,000 men and boys from Srebrenica and the forcible transfer of between 30,000 and 40,000 women, children and elderly from the United Nations safe areas of Srebrenica and Žepa.

87. All the accused were convicted. The Trial Chamber found that over the course of a few days, Army of the Republika Srpska (VRS) and Ministry of Internal Affairs forces terrorized and violently expelled the people of Srebrenica from their homes, forcing tens of thousands of women and children onto buses and forcibly transferring them out of the area. Army of the Republika Srpska and Ministry of Internal Affairs forces caught more than 7,000 Bosnian Muslim men and boys and systematically executed them as part of a large, organized extermination campaign. Most crimes were committed through two joint criminal enterprises, one to murder the able-bodied Muslim men in the enclaves, and another to forcibly remove the remaining Muslim population.

88. The trial commenced on 21 August 2006 and lasted 425 trial-days. The prosecution case closed on 7 February 2008, 17 months after the beginning of the trial. In that time, the prosecution introduced 182 witnesses and 2,906 exhibits. The defence case commenced on 2 June 2008 and closed on 12 March 2009, during which the seven accused, in their defence, introduced a total of 146 witnesses and 2,474 exhibits. The closing arguments were presented in September 2009, and the trial judgment was issued nine months later, in June 2010. In total, trial proceedings were completed in a little less than four years.

89. Appeal proceedings required another almost five years to complete. The prosecution and the defence both submitted appeals. The prosecution appealed several acquittals, requesting the Appeals Chamber to enter additional convictions. On 30 January 2015, the Appeals Chamber partially granted the prosecution's appeal, entering additional convictions for conspiracy to commit genocide against two accused, for murder against one accused, and for extermination, persecution, forcible transfer and murder against a fourth accused. In most instances, the grounds of appeal of the accused were dismissed.

90. Notices of appeal were filed in September 2010. Appeal briefing was completed in May 2011, with the filing of the parties' respective reply briefs. The appeal hearing took place in December 2013 and the appeal judgment was pronounced on 30 January 2015, almost five years after the Trial Chamber issued its first instance judgment.

91. This mega-trial again demonstrated the intrinsic challenges posed by the non-arrest of fugitives to the achievement of the completion strategy. In addition to the seven accused in *Popović et al.*, the Office of the Prosecutor intended to join the case against Zdravko Tolimir, the former assistant commander for intelligence and

security of the Main Staff of the Army of the Republika Srpska. However, Tolimir was not arrested and transferred to the Tribunal until 2007, following the commencement of the *Popović et al.* trial. Although the prosecution still sought to join the cases, on account of the advanced stage of the *Popović et al.* trial, the Trial Chamber denied the joinder and ordered that the trials be conducted separately. As Tolimir was a senior leader suspected of bearing the most responsibility for the crimes, the case against him was not suitable for transfer to national courts, and would be prosecuted by the Tribunal, adding to the judicial workload and clearly preventing the completion of all trials by the end of 2008.

92. Nonetheless, despite the need to conduct a second trial for the same crimes, the Office of the Prosecutor took steps to expedite the proceedings against Tolimir. The trial began on 26 February 2010. The prosecution completed the presentation of its evidence on 17 January 2012. The defence case began on 23 January 2012 and was completed on 21 February 2012. Closing arguments were held in August 2012, and the trial judgment was delivered on 12 December 2012, so that the trial phase was completed in a little more than two and a half years. Appeals proceedings were completed in a little less than two and a half years. Tolimir was convicted at trial, which was affirmed on appeal.

Herceg-Bosna mega-trial: *Jadranko Prlić et al.* case

93. The third multi-leadership case, and the final case of the Tribunal, was *Jadranko Prlić et al.*, which involved six high-ranking officials of the wartime Bosnian Croat entity Herceg-Bosna. Prlić, the former president of the Croatian Defence Council (HVO) and prime minister of the Croatian Republic of Herceg-Bosna, Bruno Stojić, the former head of the HVO defence department, Slobodan Praljak, the former assistant defence minister of Croatia and commander of the HVO Main Staff, Milivoj Petković, the former chief of the HVO Main Staff, Valentin Ćorić, the former head of the HVO military police administration, and Berislav Pušić, a former military police officer, head of the Service for the Exchange of Prisoners and Other Persons and president of the Commission for HVO Prisons and Detention Centres, were charged with 26 counts of grave breaches of the Geneva Conventions, violations of the laws or customs of war and crimes against humanity committed against Bosnian Muslims across several municipalities, including Gornji Vakuf, Jablanica, Prozor, Mostar, Čapljina and Vareš, and a broad network of detention centres in Bosnia and Herzegovina between November 1991 and April 1994.

94. In May 2013, the Trial Chamber rendered its judgment, convicting the six accused for their participation in a joint criminal enterprise the objective of which was to permanently remove the Bosnian Muslim population from the regions of Bosnia and Herzegovina claimed as territories of the Croatian Community of Herceg-Bosna through a violent eviction campaign characterized by the massive commission of crimes, including killings, mass arrests of Bosnian Muslim civilians and combatants, mistreatment, detention in inhumane conditions in a network of HVO detention centres, the forcible displacement of the Bosnian Muslim population, the systematic destruction of Bosnian Muslim property and the systematic use of detainees on the front lines for labour or as human shields. From June 1993 to April 1994, the common purpose of the criminal enterprise was expanded with the siege of East Mostar, during which HVO forces spread terror among the civilian population, which was forced to live under extremely harsh conditions, including in situations of constant sniping and shelling.

95. The trial commenced on 26 April 2006 and lasted 465 trial-days. The prosecution completed its case on 24 January 2008, less than two years after the start of the trial. In that time, the prosecution introduced 249 witnesses and 4,914 exhibits. The defence case commenced on 5 May 2008 and closed on 17 May 2010, during

which the six accused in their defence introduced 75 witnesses and 4,947 exhibits. The closing arguments were presented in March 2011 and were followed by the issuance of the trial judgment more than two years later, on 29 May 2013. The trial proceedings were completed in seven years. The prosecution case lasted less than two years, the defence utilized two years for its case and the Trial Chamber required more than two years to issue its judgment.

96. Appeal proceedings required four and a half years to complete. The Prosecution and Defence both submitted appeals. On 29 November 2017, the Appeals Chamber dismissed most of the grounds of appeal of the accused, allowed parts of the Prosecution's appeal and largely confirmed the Trial Chamber's findings. The Appeals Chamber affirmed the guilt of all accused and the sentences imposed by the Trial Chamber.

97. The appeal proceedings were unavoidably lengthened for a year because of the need to translate the trial judgment from French into English and Bosnian/Croatian/Serbian. Notices of appeal were filed by August 2014. The appeal briefing was completed in May 2015 with the filing of the parties' reply briefs. The appeal hearing took place in March 2017, and the appeal judgment was rendered on 29 November 2017.

3. Final fugitive trials

98. Six fugitives were arrested after the point at which it would have been possible to complete their trials by the end of 2008. Zdravko Tolimir and Vlastimir Đorđević were arrested in May and June 2007, respectively. Radovan Karadžić and Stojan Župljanin were finally arrested in July and June 2008, respectively. Unfortunately, it was not until 2011, three years later, that the Tribunal's last fugitives, Ratko Mladić and Goran Hadžić, were finally apprehended and transferred to the Tribunal.

99. As noted above, Tolimir and Đorđević were tried individually, although it had initially been hoped that they would be arrested in time for their cases to be joined to the *Popović et al.* and *Milutinović et al.* mega-trials, respectively.

100. The case against Župljanin, the former Chief of the Regional Security Services Centre of Banja Luka, was intended to be joined with that against Radoslav Brđanin, a leading political figure in the autonomous region of Krajina and the Republika Srpska. Following Župljanin's arrest in 2008, his case was joined with that against Mićo Stanišić, the former minister of internal affairs of the Republika Srpska. The trial commenced on 14 September 2009 and lasted 354 trial-days. The prosecution case closed on 1 February 2011, approximately one and a half years after the beginning of the trial. In that time, the prosecution introduced 170 witnesses and 3,928 exhibits. The defence case commenced on 11 April 2011 and closed on 8 December 2011, during which the two accused in their defence introduced 29 witnesses and 1,349 exhibits. The closing arguments were presented in May/June 2012, and the judgment was issued nine months later, on 27 March 2013. In total, trial proceedings were completed in approximately three and a half years. Notices of appeal were filed in May 2013. The appeal briefing was completed in November 2013 with the filing of the parties' respective reply briefs. The appeal hearing was held in December 2015, and the appeal judgment was pronounced on 30 June 2016, a little more than three years after the Trial Chamber had issued its first instance judgment.

101. Hadžić, the former president of the government of the Serbian autonomous region of Eastern Slavonia, Baranja and Western Srem and subsequently the president of the Republic of Serbian Krajina, was also tried individually, although it had initially been hoped that he would be arrested in time for his case to be joined with others. Regrettably, Hadžić developed a terminal condition during the latter stages of the trial and died before a judgment could be rendered by the Trial Chamber.

102. The final two fugitive trials were those against Karadžić, the former president of the Republika Srpska, and Mladić, the former commander of the Main Staff of the Army of the Republika Srpska. Karadžić and Mladić had been indicted together in 1995, and it was anticipated that they would be tried jointly. That was not possible, however, as a result of their long flight from justice. Following the arrest of Karadžić, it was hoped that Mladić would be arrested in time to allow their case to be presented in a single trial. Unfortunately, on 15 October 2009, as Mladić was not in the custody of the Tribunal, the Trial Chamber had to sever the two cases to allow the trial of Karadžić to proceed.

103. When Mladić was finally arrested in 2011, in recognition of his advanced age, the Office of the Prosecutor explored options to expedite his trial. First, in August 2011, the prosecution filed a motion seeking the severance of the second amended indictment into two separate indictments, with charges arising from the Srebrenica genocide being heard first. The Trial Chamber denied the request. The prosecution further reviewed the operative indictment to identify ways of reducing the scope of the case, while at the same time serving the interests of justice. On 16 December 2011, the prosecution filed a fourth amended indictment preserving all 11 counts of the previous indictment but reducing the number of incidents in each component of the case.

104. Karadžić and Mladić were both charged with two counts of genocide (Srebrenica and the municipalities), five counts of crimes against humanity (persecution, extermination, murder, deportation and inhumane acts) and four counts of violation of the laws or customs of war (murder, terror, unlawful attacks against civilians and the taking of hostages), through, inter alia, participation in four different but related joint criminal enterprises, the purposes of which were: (a) to permanently remove Bosnian Muslim and Bosnian Croat inhabitants from the territories of Bosnia and Herzegovina, which were claimed as Bosnian Serb territory; (b) to spread terror among the civilian population of Sarajevo through a campaign of sniping and shelling between May 1992 and November 1995; (c) to eliminate Bosnian Muslims in Srebrenica by killing men and boys and forcibly removing women, children and the elderly from the area; and (d) to take United Nations personnel hostage in order to compel NATO to abstain from carrying out air strikes against Bosnian Serb military targets. These were among the most significant and difficult trials prosecuted by the Tribunal.

105. Karadžić was charged with individual criminal responsibility for crimes committed from March 1992 to November 1995 in 20 municipalities, in the city of Sarajevo and during the Srebrenica genocide, including 127 discrete incidents, crimes committed in 51 detention facilities and the taking of more than 200 United Nations military observers and peacekeepers hostage. The *Karadžić* trial commenced on 26 October 2009 and lasted 499 trial-days. The prosecution started presenting its evidence on 13 April 2010 and closed its case on 25 May 2012. The prosecution thus required approximately two years to present its evidence, utilizing just under the 300 hours allotted for examination-in-chief. During the course of 297 trial-days, the Office of the Prosecutor led 195 witnesses in court, submitted the written statements of another 141 witnesses and tendered 6,646 exhibits totalling 87,800 pages. The Office also submitted more than 1,800 written filings. The presentation of the prosecution case within this time frame was thus significantly facilitated by the use of written evidence. However, Karadžić used around 750 hours to cross-examine witnesses, significantly extending the time required for the presentation of the prosecution's case. The defence case commenced on 16 October 2012 and ended on 3 May 2014. The Trial Chamber heard the parties' closing arguments in September/October 2014 and issued its judgment in March 2016, approximately six and a half years after the commencement of the trial. The prosecution case lasted for

two years, the defence utilized a little less than two years for its case, and the Trial Chamber required approximately one and a half years to issue its judgment.

106. On 24 March 2016, the Trial Chamber unanimously convicted Karadžić of genocide, crimes against humanity and war crimes and sentenced him to a term of imprisonment of 40 years. The Trial Chamber accepted the extensive evidence presented by the Office of the Prosecutor proving Karadžić's individual criminal responsibility for a broad range of crimes with which he was charged, including crimes committed throughout municipalities in Bosnia and Herzegovina, during the siege of Sarajevo and the Srebrenica genocide and in relation to taking United Nations personnel hostage.

107. The *Mladić* trial commenced on 16 May 2012, less than a year after the arrest of the accused, and lasted 523 trial-days. The prosecution called its last witness on 12 December 2013 and formally closed its case-in-chief on 26 February 2014. The prosecution thus required a little less than two years to present its evidence, utilizing the 207.5 hours it had been allotted. The prosecution introduced the evidence of 357 witnesses, presenting the evidence of 164 of them in the courtroom and adducing the remaining witnesses' evidence in writing. In comparison, the defence used approximately 412 hours for cross-examination, and the Chamber used approximately 123 hours to question witnesses and to deal with procedural and administrative matters. The defence case then began on 19 May 2014 and ended on 16 August 2016, a little over two years later. The Trial Chamber heard the parties' closing arguments in December 2016 and pronounced its judgment on 22 November 2017, less than one year after closing arguments and approximately five and a half years after the commencement of the case.

108. On 22 November 2017, the Trial Chamber unanimously convicted Mladić for genocide, crimes against humanity and war crimes, and sentenced him to life imprisonment. The Trial Chamber accepted the extensive evidence presented by the Office of the Prosecutor proving Mladić's individual criminal responsibility for a broad range of crimes for which he was charged, including crimes committed throughout municipalities in Bosnia and Herzegovina, during the siege of Sarajevo, the Srebrenica genocide and in relation to taking United Nations personnel hostage.

4. Conclusion

109. It is clear that the Tribunal did not achieve the milestones of completing its trials by the end of 2008 and its appeals by the end of 2010. This was inevitable given the fact that the last fugitives were not arrested until 2011.

110. At the same time, the Office of the Prosecutor undertook measures to expedite the completion of trials and appeals. It was uncertain at the time whether those measures would generate the desired results. The crimes under the jurisdiction of the Tribunal were broad and complex, and were committed on a massive scale. Bringing evidence forward to prove charges of that magnitude presented numerous challenges and obstacles.

111. One key measure was the joinder of related cases, which led to the so-called mega-trials, which visibly demonstrated the Office's efforts to expedite the completion of cases. It was hoped that the joinder of related accused into mega-trials would reduce the total time and resources required to complete the proceedings against a large number of accused. This expectation was largely realized.

112. The *Milutinović et al.* case, involving six senior accused, required 285 trial-days and was completed in approximately three calendar years. In comparison, in the related case of a single accused, the *Đorđević* case, a little more than two years were required to complete the trial proceedings for the same crimes. Similarly, in the

Popović et al. case, involving seven accused, 465 trial-days were required, and the trial was completed in a little under four years. In comparison, in the related case of a single accused, the *Tolimir* case, a little over two and a half years were needed to complete the trial proceedings for the same crimes. Accordingly, it can be safely concluded that the joinder of related cases, and in particular the so-called mega-trials, generated meaningful efficiency gains.

113. A second set of measures concerned the scope of the indictment brought by the Office of the Prosecutor. The Office sought to reduce the time required to hear its evidence through a number of related steps. Like joinder, those measures appear to have succeeded in improving the efficiency of the Office's work.

114. The Office of the Prosecutor reduced the scope of the indictment in many of its trials, and appeals commenced after the adoption of the completion strategy. While it is difficult to estimate the extra time that would have been required, it is obvious that proving additional crimes requires the presentation of further evidence, which requires more time. Similarly, the Office made extensive use of adducing witness testimony through the use of written evidence and otherwise limited the number of witnesses. Reducing the amount of live evidence-in-chief in these ways was perhaps the biggest single change in how the Office presented its prosecution case. The *Karadžić* and *Mladić* cases typified this development, as in both cases approximately half of the prosecution witnesses were questioned in court, while the evidence of the remaining half was introduced through written statements.

115. However, reductions in the scope of the prosecution case or the number of witnesses were not without potential negative repercussions for justice. In the *Milutinović et al.* and *Karadžić* trials, the Office did not succeed in proving all of its allegations. While it is difficult to clearly establish that different results would have been achieved if the prosecution could have charged more crimes, called more witnesses to testify in person or introduced more evidence, that is nonetheless a real possibility that cannot be excluded.

116. The Office of the Prosecutor considers that invitations or directions from the judges to further reduce the scope of the indictment are not the preferred mechanism to expedite trial proceedings, as the prosecution is in a better position to know what is necessary to prove its allegations. Rather, the Office considers that the better approach, also adopted by the judges, is to impose reasonable limits on the time available to present evidence. That approach is appropriately directed only at the length of the proceeding, with the prosecution left to determine which charges and evidence should be presented in the time available. It is also consistent with fair trial standards to impose similar time limits on the defence.

117. While many measures were implemented successfully to improve the efficiency of the Tribunal's proceedings, there was a major area in which expeditiousness seems not to have been improved: the appeal phase. In two of the three mega-trials, appeal proceedings lasted longer than the trials themselves. In *Đorđević*, the trial phase was completed in a little over two years, whereas appeals proceedings required three years. As noted previously, in those appeals, deliberations by the judges constituted the longest phase of the proceedings.

118. More generally, experience has shown that there is a limit to the extent to which the Office of the Prosecutor alone can improve the efficiency of proceedings. The prosecution case is only one part of trials and appeals, and the prosecution is only one of the participants in the proceedings. In a number of trials, the defence utilized more courtroom hours than the prosecution. Similarly, although the Office sought to improve the efficiency of trials by increasing the use of stipulated facts, the defence did not typically agree.

E. Transition to national prosecution of war crimes

1. Overview

119. The first prong of the completion strategy, the prosecution and trial of the most senior leaders suspected of being most responsible for crimes within the Tribunal's jurisdiction, guided the remaining trials and appeals. The second prong of the completion strategy, complementing the first, was to transfer cases involving mid-level accused to national courts for prosecution.

120. This second prong was essential to the legitimacy of the completion strategy and to preventing impunity. The investigations conducted by the Office of the Prosecutor identified hundreds if not thousands of suspects, only a small number of whom would be prosecuted by the Tribunal as senior leaders bearing the greatest responsibility. The presumption that the remaining investigations would be referred and transferred to national courts ameliorated concerns that the end of the Tribunal's work would lead to impunity.

121. Before the adoption of the completion strategy, the Tribunal, which had primacy of jurisdiction and was established to remedy the failings of national accountability mechanisms, had approached its work as largely separate from national justice systems for the crimes committed during the conflicts in the former Yugoslavia. However, with the impetus of the completion strategy, the Office of the Prosecutor shifted its approach, prioritizing the model of positive complementarity and providing greater support to national jurisdictions in the countries of the former Yugoslavia.

122. As the Office of the Prosecutor completed its investigations and commenced its final prosecutions, it increasingly sought to ensure that national judiciaries would be able to continue its work. The referral, under rule 11 bis of the Rules of Procedure and Evidence, of cases involving mid-level accused to national courts was recognized as only the beginning of those efforts. More recently, in the implementation of the completion strategy, the provision of support to national jurisdictions has formed an integral part of the activities of the Office of the Prosecutor. The Security Council recognized this imperative in its resolution 1503 (2003), in which it noted that the strengthening of national judicial systems was crucially important to the rule of law in general and to the implementation of the completion strategies for the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda in particular.

2. "Rules of the road" project

123. Prior to the adoption of the completion strategy, the "rules of the road" project was the first significant step towards improved cooperation between the Office of the Prosecutor and national prosecutors in the countries of the former Yugoslavia.

124. In Rome, on 18 February 1996, the parties to the Dayton Accord agreed that persons not already indicted by the Tribunal could be arrested and detained only for serious violations of international humanitarian law pursuant to a previously issued order, warrant or indictment reviewed and deemed consistent with international legal standards by the Office of the Prosecutor. This agreement thus established the "rules of the road" project, under which the Office of the Prosecutor analysed the sufficiency of the evidence in local investigative files and issued recommendations as to whether a prima facie case existed against a suspect. In 2000, the Office also started to undertake missions to and give lectures in the region in order to increase direct contact with local prosecutors submitting files and contribute to improving standards.

125. By mid-1997, 400 cases had already been submitted to the Office of the Prosecutor, the majority from Bosnia and Herzegovina. The prosecutorial review

function carried out by the Office of the Prosecutor was transferred to the State prosecutor of Bosnia and Herzegovina on 1 October 2004, concluding the project. In total, between 1996 and 2004, approximately 1,400 files involving more than 4,500 suspects were submitted to the Rules of the Road Unit, which reviewed approximately 1,100 files involving 3,500 suspects.

3. Rule 11 bis of the Rules of Procedure and Evidence

126. The completion strategy explicitly foresaw the referral of cases in which indictments had been confirmed by the Tribunal but which involved "intermediary-level accused", who occupied positions subordinate to the senior accused that were the focus of the first prong of the completion strategy. Accordingly, rule 11 bis of the Tribunal's Rules of Procedure and Evidence underwent successive amendments to allow the implementation of a system under which the Tribunal would refer confirmed indictments involving mid-level suspects to national courts.

127. There are many positive aspects of the legal reforms carried out by the Tribunal to implement this system. The standards for referral under rule 11 bis are clear and relatively uncontroversial. If the accused were not among those most responsible and the State concerned were willing and able to prosecute the case, the case would be appropriate for referral to national authorities. Referral motions did not create an adversarial relationship between the Office of the Prosecutor and national authorities. On the contrary, the Office was largely eager to refer cases in accordance with the completion strategy, and so it was in the interest of both the Office and national authorities to establish the conditions for a fair trial on the basis of the Tribunal's indictment. Finally, referral under rule 11 bis involved the provision of strong evidentiary support to national authorities, who were not expected to independently investigate the cases with their own resources but would instead receive the evidence gathered and analysed by the Office of the Prosecutor.

128. In parallel and in partnership with the Office of the High Representative and other regional and international organizations, the Office of the Prosecutor contributed to preparing the ground for a smooth transfer of these cases to national judiciaries in the region. With regard to the national legal framework, the Office raised important matters that anticipated and removed obstacles to the use of the Tribunal's indictments and evidence in the respective national systems, such as promoting special laws that permitted the direct introduction of evidence received from the Office of the Prosecutor into national proceedings. From an institutional perspective, the Office further supported the creation of local courts to prosecute conflict-related crimes, most notably the War Crimes Chamber of the State court of Bosnia and Herzegovina, the War Crimes Chamber in the district court of Belgrade and specialized chambers in the district courts of Croatia.

129. At the same time, the Office of the Prosecutor recognized that given the limited experience national prosecutors and judges had with complex war crimes cases, more needed to be done to prepare the national judiciaries to conduct such cases. In particular, it was necessary to assist national prosecutors in understanding the cases prepared by the Office so that they could present them coherently and comprehensively to national judges. Accordingly, in 2004, the Office established a small special unit, the Transition Team, to coordinate its cooperation efforts with national prosecutors from the countries of the former Yugoslavia. The Team's mandate was to support national prosecutions, initially with respect to the rule 11 bis cases, and later more generally.

130. Having supported legal and institutional reforms in national jurisdictions and contributed to building the capacity of national courts, the Office of the Prosecutor made full use of the referral mechanism under rule 11 bis. Under its system for

categorizing investigative targets, as discussed in paragraph 26 above, the Office readily identified the suspects on priority list B who would be referred or otherwise transferred to national courts for further proceedings. The Office filed its first rule 11 bis motions in August 2004 and the last one in July 2007.

131. In total, eight rule 11 bis cases, involving 13 persons indicted by the Tribunal were referred to courts in the countries of the former Yugoslavia. Of those, six cases were transferred to Bosnia and Herzegovina, one to Croatia and one to Serbia. Seven of the cases were completed, while the eighth, referred to Serbia, was suspended owing to the inability of the accused to stand trial. Ten accused were convicted, one entered a plea of guilty to the charges and one was acquitted.

132. The cases were tried in accordance with the national laws of the prosecuting States and on the basis of the Tribunal's indictment and supporting evidence provided by the Office of the Prosecutor. OSCE monitored proceedings in the transferred cases on behalf of the Office of the Prosecutor and provided it with regular case reports. The Prosecutor submitted quarterly progress reports, based on the conclusions of OSCE, to the Tribunal's Referral Bench on all pending rule 11 bis cases.

133. The referral of cases to national courts under rule 11 bis was successful in supporting the implementation of the completion strategy. A total of eight cases, involving 13 accused, which would otherwise have been prosecuted by the Tribunal, were instead referred to national courts, reducing the Tribunal's remaining caseload. Perhaps even more importantly, the programme had significant capacity-building impact. Cooperation between the Office of the Prosecutor and national judiciaries in preparation for the referrals contributed to the adoption of positive legal reforms to ensure that national war crimes prosecutions would be conducted in a manner consistent with international standards. In addition, a number of key legal concepts utilized by the Tribunal (such as command responsibility and joint criminal enterprise) were taken up in the national prosecution of accused transferred under rule 11 bis and were successfully adjudicated. Likewise, the rule 11 bis cases provided national courts with an important opportunity to develop knowledge and skills in such practical matters as witness protection. Direct lines of communication that were established between the Office of the Prosecutor and regional prosecutors' offices also helped to further build the capacity of those institutions.

4. Category II programme

134. As a follow-up to the rule 11 bis proceedings, the Office of the Prosecutor initiated the category II programme. Rule 11 bis was directed at indictments that had been confirmed by the Tribunal but that should not be prosecuted at the Tribunal because the accused were not senior leaders most responsible for the crimes. The category II programme concerned investigative files for which a decision to issue an indictment had not been made and would not be made in view of the completion strategy and the deadline to complete investigations by the end of 2004. The category II files were at various stages of investigation. While some were almost ready for indictment, others required further investigative work.

135. In June 2005, the Office of the Prosecutor began transferring category II cases to national authorities for further processing. By the end of the programme, in December 2009, the Office of the Prosecutor had transferred 17 files involving 65 suspects to prosecution services in Bosnia and Herzegovina, Croatia and Serbia. A total of 13 files involving 38 suspects were transferred to Bosnia and Herzegovina, 2 cases with 25 suspects were transferred to Serbia and 2 cases with 2 suspects were transferred to Croatia.

136. A few points regarding the category II programme should be highlighted. First, unlike the rule 11 bis cases, category II cases were generally not "trial ready". The

national prosecutors who received the files were expected to analyse the existing evidence, develop prosecutorial theories and conduct further investigations, leading to a decision to either close the investigation because of a lack of evidence or prepare an indictment for submission to the court. In contrast, the rule 11 bis cases were fully prepared and trial ready, with national prosecutors largely expected to present only the case prepared by the Office of the Prosecutor to the respective national court.

137. Not surprisingly, then, the category II files were not processed as quickly as the rule 11 bis cases, and a number of challenges were encountered in relation to the experience and capacities of the national judiciaries. For example, there were numerous delays in Bosnia and Herzegovina, to which most of the category II cases were transferred. Prosecutors did not appropriately prioritize those cases, preferring in some circumstances to instead work on their own less complex cases that could be completed more quickly. In a number of cases, the investigative file against multiple suspects was unjustifiably split into an individual file for each accused, which greatly hindered the processing of the cases and the preparation of a persuasive case for the courtroom. In other cases, prosecutors failed to fully understand the evidence, the crimes and the criminal liability of the accused, with the result that indictments were repeatedly rejected by the court owing to flaws in the presentation.

138. Recognizing that progress was not sufficient, the Office of the Prosecutor increased its engagement with national counterparts. The Office reviewed the case files, assessed the progress that had been made and provided direct advice as to additional actions that could be taken and the strength of the case theory being developed. The Office also strongly insisted that the category II cases be given high priority. This engagement generated results. By December 2015, the office of the prosecutor of Bosnia and Herzegovina had taken prosecutorial decisions in all but one outstanding category II case. Indictments have been confirmed and trial proceedings are ongoing.

139. Second, as with the rule 11 bis cases, the Transition Team played an important role in the category II process. The Team oversaw the identification, preparation and transfer of files to national prosecutors, including assembling, organizing and summarizing available evidence, providing thorough legal and criminal analysis, contacting witnesses and handling witness protection and other confidentiality issues. During and after the transfer, the Team remained available to assist national prosecutors by providing them with information and documents, handling their requests for assistance and answering questions, in relation not only to the transferred files, but also to any other cases handled by the Tribunal of relevance to the work of national prosecutors.

140. Third, while the completion strategy initially envisaged that cases transferred to national courts would involve "intermediary-level suspects", the category II process demonstrated that a number of senior-level suspects also remained to be investigated and prosecuted. It is important to underscore that the completion strategy did not require the Office of the Prosecutor to investigate and prosecute all senior-level suspects, but only those bearing the greatest responsibility for the crimes.

141. As a result, the Office of the Prosecutor did not complete investigations against a number of senior-level suspects who did not bear the greatest responsibility but who were still criminally responsible for crimes committed. Those suspects were also transferred to national jurisdictions under the category II programme. For example, while the Office indicted and prosecuted Rasim Delić, the former commander of the Main Staff of the Army of Bosnia and Herzegovina, it did not indict Sakib Mahmuljin, the former commander of the third corps of the Army of Bosnia and Herzegovina and Delić's direct subordinate. The investigation against Mahmuljin, a senior-level suspect, was transferred to the office of the prosecutor of Bosnia and Herzegovina,

which completed the investigation and filed an indictment. At the time of writing, that trial was ongoing.

142. Accordingly, in practice, the second prong of the completion strategy could not consist simply in the transfer of cases involving mid-level accused to national courts for prosecution, as a narrow focus would have led to impunity. Rather, the Office of the Prosecutor supported national courts by transferring a larger number of investigative files concerning both senior- and mid-level suspects for further processing.

5. Access to evidence

143. In the course of its investigations from 1994 to 2004, the Office of the Prosecutor collected an overwhelming amount of evidence on the crimes committed during the conflicts in the former Yugoslavia. Most of that evidence was never introduced in the Tribunal's proceedings and is available only from the Office's evidence collection.

144. The evidence collection includes more than 9 million pages of evidence, including witness statements given during investigations, documentary evidence obtained from governmental and military archives and expert reports in subjects such as forensic pathology, ballistics, demography, military analysis and other specialized forensic fields. The evidence collection also includes thousands of hours of video and audio records, as well as a variety of physical evidence, such as weaponry and other artefacts.

145. Since its inception, the Transition Team has been responsible for searching the Office of the Prosecutor's databases in response to requests for assistance submitted by national judiciaries. From 2005 to the present, the Office has received and processed more than 2,336 requests for assistance from Bosnia and Herzegovina, Croatia and Serbia alone, as well as hundreds of requests for assistance from third States.

146. At the same time, given the fact that thousands of cases still need to be investigated at the national level, the Office of the Prosecutor enabled counterparts in the region to gain remote access to its electronic evidence databases. National investigators and prosecutors thus are able to directly search the non-confidential portions of the evidence collection and identify relevant materials that may assist them in their investigations and prosecutions. This direct access was further strengthened through the establishment in 2009 of the liaison prosecutors project.

6. European Union/International Tribunal for the Former Yugoslavia project

147. In cooperation with the European Union, the Office of the Prosecutor in 2009 established a training project for national prosecutors and young professionals from countries of the former Yugoslavia under which the national prosecutors' offices of Bosnia and Herzegovina, Croatia and Serbia seconded prosecutors to work together with the Transition Team in The Hague. Since its inception, 15 such liaison prosecutors have joined the project, which was transferred to and continued by the Office of the Prosecutor of the International Residual Mechanism for Criminal Tribunals as from January 2017.

148. Designed to strengthen the capacity of national prosecutors working on the large number of war crimes cases stemming from the conflicts in the former Yugoslavia, the project had many benefits. Although the liaison prosecutors worked on their own cases, they interacted closely with members of the Transition Team. By sitting side by side with staff members of the Office of the Prosecutor, liaison prosecutors had a unique opportunity to consult with in-house experts, investigators and prosecutors on

related cases and general issues. The liaison prosecutors benefited from on-the-job training, which encompassed how to search, review and analyse electronic databases to gain access to confidential material in the possession of the Tribunal. They were also given access to unrestricted non-confidential materials, which they could search and review for the purposes of local war crimes investigations and cases. In this way, the liaison prosecutors were able to utilize nearly all of the Tribunal's resources. A further advantage of the project was that the liaison prosecutors acted as points of contact for other national prosecutors throughout the region who were working on war crimes cases.

149. In parallel, the project has provided funded internships to young legal professionals from countries of the former Yugoslavia as an additional way to strengthen the capacity of national criminal justice systems. Young professionals joined the Office of the Prosecutor as interns and worked directly with the trial and appeals teams, enabling them to develop the highest standard of skills in investigations, case management, oral advocacy and legal analysis. They were also invited to attend lectures and presentations on various topics related to the work of the Office of the Prosecutor and the Tribunal in general. By investing in the education and training of young lawyers, this initiative contributed directly to the future capacity of countries in the region to deal effectively with complex war crimes cases. Since 2009, 114 young professionals have participated in the project, which will also be continued by the Mechanism.

7. Capacity-building and knowledge transfer

150. The successful implementation of the completion strategy was clearly dependent on the capacities and skills of national judiciaries in the countries of the former Yugoslavia. In recognition of this fact, the Office of the Prosecutor engaged directly in intensive efforts to further strengthen the capacity to handle war crimes cases in accordance with international standards. These activities were conducted using the Office's existing resources and additional extrabudgetary support from international organizations and States Members of the United Nations.

151. Over the years, the involvement of staff members of the Office of the Prosecutor in regional training initiatives has been an important mechanism for transferring the Office's expertise and knowledge to prosecutors and others working on war crimes cases at the national level in the countries of the former Yugoslavia. Given its experience and knowledge, the Office was uniquely placed to provide such training to its regional counterparts.

152. In practice, the Office of the Prosecutor supported training programmes, seminars and peer-to-peer meetings for regional prosecutors and law students by making staff members with relevant knowledge and expertise available to participate as expert trainers. Staff members shared with their counterparts tools, techniques and principles that proved to be of assistance in complex investigations and prosecutions. They further shared particular insights or information with national colleagues working on related cases, assisting them in making sense of the evidence, the context and the issues for different crime bases. Representatives of the Office also participated regularly in regional conferences, sharing information, expertise, best practices and insight into the legacy of the Tribunal.

153. As the Office of the Prosecutor became increasingly involved in training programmes, particularly in Bosnia and Herzegovina, it intensified its efforts to ensure the development of coordinated and effective regional training programmes, making the best possible use of the Office's in-house expertise and lessons learned. To this end, the Office commissioned its own assessment of the training needs of prosecutors in Bosnia and Herzegovina. The resulting report was finalized in 2013

with the assistance of a senior expert. It provided concrete recommendations for improving national war crimes proceedings through the creation of a structured and comprehensive training programme. The report was shared with the Office's primary partners, in particular the European Union, the United Nations and OSCE, and relevant authorities in Bosnia and Herzegovina. The training assessment has served as an important guide for the Office in its efforts to shape its contribution to regional training programmes and capacity-building in general.

154. The Office of the Prosecutor was regularly invited to contribute to documents and reports aimed at identifying lessons learned and fostering knowledge transfer. For example, in 2009, the Office contributed to the report entitled "Supporting the Transition Process: Lessons Learned and Best Practices in Knowledge Transfer", prepared by the Office for Democratic Institutions and Human Rights of OSCE in conjunction with the Tribunal and the United Nations Interregional Crime and Justice Research Institute. In the report, the outstanding needs of judiciaries in the countries of the former Yugoslavia were identified and the effectiveness of existing capacity-building initiatives evaluated. The report also included a number of recommendations for assisting the national authorities of the former Yugoslavia and international organizations supporting capacity-building in the region.

155. Together with its counterparts at the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, the Special Tribunal for Lebanon and the Extraordinary Chambers in the Courts of Cambodia, the Office of the Prosecutor produced a compendium of lessons learned and suggested practices, published in 2013 and available from the International Association of Prosecutors. The objective of the initiative was to share the experience of the various prosecution offices in prosecuting mass atrocities and make their insights available to other national and international prosecutors.

156. As the Tribunal neared the completion of its mandate, the Office of the Prosecutor started to identify other avenues for transferring its expertise to national authorities. In an attempt to record and share its legacy, best practices and lessons learned with respect to the prosecution of conflict-related sexual violence, the Office published, in May 2016, a book entitled *Prosecuting Conflict-Related Sexual Violence at the ICTY*,[2] thoroughly documenting and analysing its work and the Tribunal's jurisprudence on such crimes.

157. Prepared with a capacity-building focus, this major publication constitutes an important tool for practitioners around the world and has led to regular peer-to-peer activities under the auspices of the Prosecuting Conflict-Related Sexual Violence Network, set up through the International Association of Prosecutors and supported by the Office of the Prosecutor. In June 2017, the Office published a translation of the book in the Bosnian/Croatian/Serbian language. A complementary training programme is being developed by the Office of the Prosecutor of the Mechanism to help teach practitioners in the countries of the former Yugoslavia and elsewhere the key insights and lessons of the book.

8. Regional judicial cooperation

158. From its first completion strategy reports, submitted in 2004, the Office of the Prosecutor drew the attention of the Security Council to the urgent need to establish an efficient regional judicial cooperation framework to avoid impunity. Despite real progress in the area of capacity-building, it quickly became apparent that many obstacles had the potential to prevent effective regional judicial cooperation. The

[2] Serge Brammertz and Michelle Jarvis, eds., Oxford University Press, 2016.

most obvious barriers were bans on extradition in all countries and the absence of mechanisms to transfer evidence and cases among prosecutors' offices in the region.

159. Over the years, the Office of the Prosecutor has been deeply involved in efforts aimed at improving regional judicial cooperation among national prosecution offices. The political will to address extradition bans never developed. As a result, the Office prioritized formal and informal cooperation among prosecutors. The Office strongly encouraged the bilateral protocols on war crimes and other complex crimes among the prosecutors of Croatia, Bosnia and Herzegovina, Serbia and Montenegro. The protocols address important practical issues, such as the sharing of information and evidence and procedures to cooperate in the transfer of cases.

160. In addition to closely monitoring developments in regional judicial cooperation matters, the Office of the Prosecutor consistently reported on such issues to the Security Council and the Office's primary partners. The Office, moreover, regularly engaged with judicial and political authorities in the region, on a bilateral basis as well as through multilateral forums, by participating in the many meetings organized to advance regional cooperation, including the so-called Palić process, under the auspices of OSCE, later taken over by the State attorney's office of Croatia at the conference of prosecutors of the countries of the former Yugoslavia held in Brijuni, Croatia, in 2007.

9. Conclusion

161. As the Security Council recognized in its resolution 1503 (2003), the strengthening of national judicial systems is crucially important to the rule of law in general and to the implementation of the completion strategies for the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda in particular. The Office of the Prosecutor accordingly undertook a range of activities to improve the capacity of national justice institutions throughout the former Yugoslavia. This work should be recognized as among the most important legacies of the Office and the Tribunal.

162. The extensive assistance provided by the Office of the Prosecutor under the completion strategy, through the development of close relationships with prosecutors in the region, the creation of a joint training project with the European Union and various information-sharing and capacity-building mechanisms, has greatly enhanced the ability of national jurisdictions to continue the Tribunal's work by prosecuting additional high-, mid- and low-level suspects.

163. With the Tribunal's closure, further accountability for the crimes now depends fully on national judiciaries in the countries of the former Yugoslavia. Thousands of cases remain to be processed, in particular many complex cases against senior- and mid-level suspects in every country. Accordingly, it is essential that support continue to be provided to the national judiciaries. The Security Council recognized this imperative, providing in article 28 (3) of the Mechanism's statute that the Mechanism shall respond to requests for assistance from national authorities.

164. As the Offices of the Prosecutor of the Tribunal and the Mechanism have reported over the past few years, many challenges remain in ensuring accountability for war crimes, crimes against humanity and genocide in the national courts of the countries of the former Yugoslavia, with negative trends overshadowing the positive. In Bosnia and Herzegovina, there has been much progress, particularly in the prosecution of complex cases. Yet there remains a large backlog of war crimes cases, and justice for such crimes is heavily politicized and often under attack. In Croatia, blatant political interference in the justice process continues, as Croatian authorities are not providing effective judicial cooperation in relation to a large number of suspects and accused living openly in Croatia today. In Serbia, progress in justice for

war crimes in recent years has been distinctly unsatisfactory, and impunity for many well-established crimes remains the norm.

165. More positively, the progress that was achieved in the past shows that recent trends are reversible if and when there is political will to support independent and impartial accountability. Experience has conclusively shown that national ownership of war crimes justice, appropriately supported by international assistance and expertise, can meaningfully advance accountability.

166. Ultimately, the achievement of the completion strategy will not be measured simply by the Tribunal's closure, but rather by whether the countries of the former Yugoslavia build the rule of law and demonstrate that they can secure meaningful justice for the victims of serious crimes committed during the conflicts. Thus, as the completion strategy always foresaw, the completion of the Tribunal's mandate is not the end of justice for war crimes but the beginning of the next chapter. The reality is that investigations and prosecutions in national courts will continue in the foreseeable future, and the international community must continue to provide its full support to those endeavours.

F. Mechanism for International Criminal Tribunals

167. Established by the Security Council in its resolution 1966 (2010), the Office of the Prosecutor of the Mechanism will continue to implement the completion strategy by carrying out its remaining responsibilities for the residual functions of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

168. The Office of the Prosecutor of the Mechanism is responsible for prosecuting a limited number of trials and appeals transferred from the Tribunal pursuant to the transitional arrangements of the Mechanism. This ad hoc judicial activity is temporary in nature. As from the closure of the Tribunal, the Mechanism will prosecute one trial (the *Stanišić and Simatović* case) and two appeals (the *Karadžić* and *Šešelj* cases). The Mechanism will also be responsible for conducting further appeal proceedings, if any, in the *Mladić* case. The Mechanism is committed to the expeditious and efficient completion of the final proceedings and will build upon the experience of and lessons learned by the Office of the Prosecutor of the Tribunal, including as set out in the present report.

169. The Office of the Prosecutor of the Mechanism has identified the provision of assistance to national jurisdictions prosecuting crimes committed in the conflicts of the former Yugoslavia as a key priority. Chief prosecutors and national authorities have announced their desire to further strengthen cooperation with the Office and have requested its continued support and engagement, particularly assistance in meeting commitments established in national war crimes strategies. Building on the experience of and lessons learned by the Office of the Prosecutor of the Tribunal, the Mechanism's Office will prioritize best practices, including by responding to evidentiary, case-specific and strategic requests for assistance, providing increased access to the Office's evidence collection, supporting national prosecutors in concrete cases, monitoring developments in accountability for national war crimes and supporting further capacity-building in national criminal justice sectors. The Mechanism will also maintain the joint project of the European Union and the Tribunal that enables liaison prosecutors and young professionals from Bosnia and Herzegovina, Croatia and Serbia to continue to benefit from the opportunity to work in an international environment with highly skilled criminal justice practitioners.

170. Finally, the Office of the Prosecutor of the Mechanism will carry out its responsibilities in relation to residual functions in respect of victim and witness

protection, contempt of court, sentence enforcement, judgment review and records and archives management for as long as the Security Council so mandates.

171. As a temporary institution with a reduced number of functions, the Mechanism is responsible for the continued implementation of the completion strategy. The completion of all remaining trials and appeals arising from the Tribunal will be a major milestone in its work. At the same time, the Office of the Prosecutor of the Mechanism will continue to implement the completion strategy by supporting national justice for war crimes as mandated.

IV. Conclusion

172. The International Tribunal for the Former Yugoslavia is now closing its doors, leaving behind a rich and complex legacy. The full scope of the Tribunal's impact may not be known for many years, and assessments of its work will vary according to the perspective from which they are viewed. With indictments having been issued against 161 individuals and all fugitives accounted for, the Tribunal has achieved a record of accountability unmatched by any modern international criminal tribunal. Yet it is also true that many victims have not received the justice they deserve, and thousands of suspects have yet to be investigated and prosecuted. Nonetheless, the results achieved by the Tribunal, the first war crimes tribunal since Nuremberg, have been immense, and the completion strategy has proved to be an important and useful precedent.

173. The establishment of the Tribunal began a process of ensuring accountability for the most serious international crimes that continues today. A little more than one year after the creation of the Tribunal, the Security Council established the International Criminal Tribunal for Rwanda to bring to justice those responsible for crimes committed in Rwanda in 1994. So-called hybrid criminal tribunals followed, with the Special Court for Sierra Leone established in 2002, the Extraordinary Chambers in the Courts of Cambodia established in 2003 and the Special Tribunal for Lebanon established in 2007. Further innovations in regional hybrid tribunals led to the establishment of the Extraordinary African Chambers in 2013 and the creation of the Special Criminal Court in the Central African Republic in 2015, with a similar hybrid tribunal foreseen as part of the 2015 Agreement on the Resolution of the Conflict in the Republic of South Sudan. For many, the revitalization of international criminal justice that began with the International Tribunal for the Former Yugoslavia culminated in the adoption of the Rome Statute in 1998 and the establishment of the International Criminal Court in 2002. While local demands for justice were key to the creation of later courts, the Tribunal served as a guide and an inspiration, demonstrating that accountability could be a reality and giving victims in other conflicts hope that they too could see justice prevail.

174. The Tribunal contributed decisively to the development of international criminal and humanitarian law. Building on the precedents established at Nuremberg, the Tribunal applied conventional and customary law in practice on many issues for the first time. This led to important precedents that have been adopted and applied by criminal courts and armed forces around the world. While entire academic volumes have been and will continue to be written on the Tribunal's jurisprudence, a few of the most notable developments are highlighted below.

175. In one of its earliest decisions, the Tribunal was the first court to recognize that following developments in State practice and *opinio juris*, many principles and norms of international law now applied equally to international and non-international armed conflicts, the violation of which could also equally entail individual criminal responsibility under international law. The crime of genocide was also greatly

developed by the Tribunal and its Office of the Prosecutor, which had to confront many questions. As the Tribunal's jurisprudence consistently held, genocide is not a question of how many victims were killed, but whether the crimes were committed with the intent to destroy a protected group in whole or in part. Through its cases, the Tribunal and its Office of the Prosecutor also made major contributions to the law of command responsibility, a principle of immense importance in the prevention of war crimes, grave breaches of the Geneva Conventions, crimes against humanity and genocide. Finally, the Tribunal and the Office of the Prosecutor achieved notable results in the prosecution of crimes that had historically been marginalized, particularly conflict-related sexual violence, as well as the destruction of cultural heritage. The Tribunal's cases have clearly concluded that rape and other forms of sexual abuse are violent crimes deserving of the most severe punishment, while also demonstrating that crimes of sexual violence are often intentional weapons of war used to inflict suffering, instil terror and undermine social structures in targeted populations.

176. Of course, any assessment of the Tribunal's impact must take into account the facts established in the courtroom, the perpetrators held accountable and the victims who received some measure of justice. The Office of the Prosecutor secured the conviction of 90 individuals for war crimes, grave breaches of the Geneva Conventions, crimes against humanity and/or genocide, while 19 individuals were acquitted and 13 were referred to national courts for prosecution. Those convicted include senior political and military officials from nearly all parties to the conflicts. The Office proved repeatedly in case after case that during the conflicts in the former Yugoslavia, leaders pursued their political and military goals through the commission of crimes. Campaigns of ethnic cleansing were launched specifically targeting innocent civilian populations, who were subjected to the widespread and systematic commission of crimes, including killings, torture, persecution, sexual violence, destruction of cultural heritage, imprisonment and forcible transfer or deportation. The ultimate expression of those criminal policies was the Srebrenica genocide in 1995, during which more than 7,000 Bosnian Muslim men and boys were rounded up and summarily executed, while tens of thousands of women, children and elderly persons were terrorized, assaulted and forcibly expelled from their homes. Those crimes were committed pursuant to a joint criminal enterprise designed and implemented by senior political and military leaders in violation of all international laws and principles of humanity. The organized criminal campaigns during the conflicts in the former Yugoslavia led to millions of refugees and internally displaced persons and more than 100,000 deaths. Many of the victims saw those ultimately responsible for the crimes they suffered brought to justice and held accountable.

177. Yet at the same time, the Tribunal did not always achieve legitimate expectations for its work, and its activities are not without valid criticisms. In particular, the Office of the Prosecutor must regard the acquittals, whether at trial or on appeal, in a number of high-profile cases as real setbacks. While the Office proved in those cases that crimes had been committed and was convinced that it had presented evidence of the guilt of the accused beyond a reasonable doubt, it did not secure convictions, a result that is deeply disappointing to the victims. Equally, as a consequence of the completion strategy, the Office did not prosecute many crimes for which it had gathered evidence, leaving accountability gaps and victims still waiting for justice today.

178. The Tribunal also did not always achieve swift justice and meet established targets for the completion of its work. Both victims and the Security Council have pointed to cases that were delayed time and again, and it was noted that efficient case management and judicial independence did not have to be in conflict. The Tribunal could have engaged in more critical reflection to identify and implement further

solutions, as it did when proposing the completion strategy. While justice delayed is not necessarily justice denied, and external factors such as the non-arrest of fugitives prevented the achievement of the milestones initially planned, the Tribunal's work could have been completed more expeditiously.

179. Finally, the Tribunal cannot be said to have had the desired impact in the communities of the former Yugoslavia, particularly in terms of their acceptance of the truth of the recent past and regional reconciliation. This is due in part to the Tribunal's struggle to overcome the obstacles presented by distance and language. In addition, although more than 4,500 witnesses testified before the Tribunal, the Tribunal did not always recognize the imperative of initiating true dialogue with the affected communities. Moreover, the Tribunal was ill equipped on its own to counter entrenched interests, which attacked and undermined the Tribunal's reputation in local communities for personal and political ends. As a result, the denial of crimes and the glorification of convicted war criminals have become immense challenges preventing real reconciliation and stability in the region. These must be considered issues of the utmost concern, and with the closure of the Tribunal, it is now more important than ever that they be addressed.

180. The fact that the Tribunal did not achieve all of its expectations does not, however, change the truth that it made an immeasurable contribution to justice in the former Yugoslavia. Without the Tribunal, impunity for the crimes committed would have remained the rule, and few if any senior leaders would have been held accountable for their crimes. That is why, even with its closure, the work begun by the Tribunal must continue. The Mechanism and its Office of the Prosecutor will be a part of those efforts. The primary responsibility, however, rests with national courts and authorities. For their work to succeed, it is critical that the Security Council, such international organizations as the United Nations and the European Union, and States Members of the United Nations continue to fully support the national justice process, just as they did for the Tribunal and its Office of the Prosecutor.

181. Ultimately, tens of thousands of victims of war crimes, grave breaches of the Geneva Conventions, crimes against humanity and genocide have received justice thanks to one visionary decision: the Security Council's unanimous agreement, by its resolution 827 (1993) of 25 May 1993, to establish an international tribunal for the purpose of prosecuting persons responsible for serious violations of international humanitarian law in the territory of the former Yugoslavia. That decision, taken 24 years ago, has been vindicated. As one of the pre-eminent organs of global order, entrusted with the primary responsibility for maintaining international peace and security, the Council recognized that justice is not in conflict with peace, but rather is a tool for restoring and maintaining it. Despite fears that no trials would ever be held, the Council thus resolved to embark on a historic path towards peace and justice. As a result, victims in the former Yugoslavia, as well as in countries around the world, saw that justice is not merely a hope but a reality.

182. The Office of the Prosecutor is grateful to the Security Council for its leadership and for the opportunity to contribute to the achievement of a historic mandate. For 24 years, it has been an honour and a privilege to carry out the Council's aims by bringing to justice those responsible for horrific violations of international law. The Office has always relied on the support of the Council, in particular, in carrying out its work, and hopes that in turn the Council will judge its efforts as important contributions to the maintenance of international peace and security and worthy of the extraordinary responsibility entrusted to it.

Enclosure I

Trial and appeal judgments, 18 May to 29 November 2017

A. Trial judgments

Name	*Former title*	*Initial appearance*	*Trial judgment*
Ratko Mladić	Colonel General, commander of the Main Staff of the Army of the Republika Srpska, Bosnia and Herzegovina	3 June 2011	22 November 2017

B. Appeal judgments

Name	*Former title*	*Appeal judgment*
Jadranko Prlić	President of the Croatian Defence Council and prime minister of the Croatian Republic of Herceg-Bosna	29 November 2017
Bruno Stojić	Head of the Department of Defence, Croatian Republic of Herceg-Bosna	29 November 2017
Slobodan Praljak	Assistant defence minister of Croatia and commander of the Croatian Defence Council Main Staff	29 November 2017
Milivoj Petković	Deputy overall commander of the Croatian Defence Council forces and chief of the Croatian Defence Council Main Staff	29 November 2017
Valentin Ćorić	Head of the military police administration, Croatian Defence Council	29 November 2017
Berislav Pušić	Head of the military police administration, Croatian Defence Council	29 November 2017

Enclosure II

Persons on trial and on appeal and judgments for contempt

A. Persons on trial as at 29 November 2017

Name	*Former title*	*Initial appearance*	*Start of trial*
None			

B. Persons on appeal as at 29 November 2017

Name	*Former title*	*Date of trial judgment*
None		

C. Trial judgments for contempt, 18 May 2017 to 29 November 2017

Name	*Former title*	*Date of tender in lieu of indictment*	*Trial judgment*
None			

D. Appeal judgments for contempt, 18 May 2017 to 29 November 2017

Name	*Former title*	*Date of trial contempt judgment*	*Appeal judgment*
None			

Enclosure III

Proceedings completed between 18 May and 29 November 2017

A. Trial judgments rendered

Prosecutor v. Ratko Mladić IT-09-92-T (22 November 2017)

B. Contempt judgments rendered

None

C. Appeals of judgments rendered

Prosecutor v. Prlić et al. IT-04-74-A (29 November 2017)

D. Appeals of contempt rendered

None

E. Final interlocutory decisions rendered on appeal

Prosecutor v. Ratko Mladić IT-09-92-AR65.1

(confidential version filed on 27 June 2017, public redacted version filed on 30 June 2017)

F. Review, referral and other appeal decisions rendered

None

Enclosure IV

Proceedings ongoing as at 29 November 2017

A. Trial judgments

None

B. Contempt judgments

None

C. Appeals of judgments

None

D. Appeals of contempt

None

E. Interlocutory decisions

None

F. Review, referral and other appeal decisions

None

Enclosure V

Decisions and orders rendered between 18 May and 29 November 2017

1. Total number of decisions and orders rendered by the Trial Chambers: 18
2. Total number of decisions and orders rendered by the Appeals Chamber: 15
3. Total number of decisions and orders rendered by the President of the Tribunal: 14

Enclosure VI

Trial judgments

Case number	*Case name*	*Date*	*Date of initial appearance*	*Number of accused*	*Number of pages*[a]
IT-94-1-T	*Prosecutor v. Duško Tadić*	7 May 1997	26 April 1995	1	304
IT-96-21-T	*Prosecutor v. Hazim Delić, Zdravko Mucić, Zejnil Delalić and Esad Landžo* or *Mucić et al.* (Čelebići case)	16 November 1998	11 April 1996 Zdravko Mucić 9 May 1996 Zejnil Delalić 18 June 1996 Hazim Delić and Esad Landžo	4	487
IT-95-17/1-T	*Prosecutor v. Anto Furundžija*	10 December 1998	19 December 1997	1	122
IT-95-14/1-T	*Prosecutor v. Zlatko Aleksovski*	25 June 1999	29 April 1997	1	93
IT-95-10-T	*Prosecutor v. Goran Jelisić*	14 December 1999	26 January 1998	1	46
IT-95-16-T	*Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Šantić* or *Kupreškić et al.*	14 January 2000	8 October 1997 Zoran Kupreškić, Mirjan Kupreškić, Drago Josipović, Dragan Papić and Vladimir Šantić 16 January 1998 Vlatko Kupreškić	6	349
IT-95-14-T	*Prosecutor v. Tihomir Blaškić*	3 March 2000	3 April 1996	1	290
IT-96-23-T	*Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković* or *Kunarac et al.*	22 February 2001	9 March 1998 Dragoljub Kunarac 4 August 1999 Radomir Kovač 29 December 1999 Zoran Vuković	3	323
IT-95-14/2-T	*Prosecutor v. Dario Kordić and Mario Čerkez*	26 February 2001	8 October 1997	2	370
IT-98-33-T	*Prosecutor v. Radislav Krstić*	2 August 2001	7 December 1998	1	260
IT-98-30/1-T	*Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać* or *Kvočka et al.*	2 November 2001	16 December 1998 Miroslav Kvočka, Mlado Radić, Milojica Kos and Zoran Žigić 10 March 2000 Dragoljub Prcać	5	245
IT-97-25-T	*Prosecutor v. Milorad Krnojelac*	15 March 2002	18 June 1998	1	237
IT-98-32-T	*Prosecutor v. Mitar Vasiljević*	29 November 2002	28 January 2000	1	122
IT-98-34-T	*Prosecutor v. Mladen Naletilić and Vinko Martinović*	31 March 2003	12 August 1999 Vinko Martinović 24 March 2000 Mladen Naletilić	2	296
IT-97-24-T	*Prosecutor v. Milomir Stakić*	31 July 2003	28 March 2001	1	290
IT-95-9-T	*Prosecutor v. Blagoje Simić, Miroslav Tadić and Simo Zarić* or *Simić et al.*	17 October 2003	17 February 1998 Miroslav Tadić 25 February 1998 Simo Zarić 15 March 2001 Blagoje Simić	3	370

Case number	*Case name*	*Date*	*Date of initial appearance*	*Number of accused*	*Number of pages*[a]
IT-98-29-T	*Prosecutor v. Stanislav Galić*	5 December 2003	29 December 1999	1	334
IT-99-36-T	*Prosecutor v. Radoslav Brđanin*	1 September 2004	12 July 1999	1	418
IT-02-60-T	*Prosecutor v. Vidoje Blagojević and Dragan Jokić*	17 January 2005	16 August 2001 Vidoje Blagojević 21 August 2001 Dragan Jokić	2	339
IT-01-42-T	*Prosecutor v. Pavle Strugar*	31 January 2005	25 October 2001	1	231
IT-01-48-T	*Prosecutor v. Sefer Halilović*	16 November 2005	27 September 2001	1	309
IT-03-66-T	*Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu* or *Limaj et al.*	30 November 2005	20 February 2003 Haradin Bala and Isak Musliu 5 March 2003 Fatmir Limaj	3	316
IT-01-47-T	*Prosecutor v. Enver Hadžihasanović and Amir Kubura*	15 March 2006	9 August 2001	2	689
IT-03-68-T	*Prosecutor v. Naser Orić*	30 June 2006	15 April 2003	1	309
IT-00-39-T	*Prosecutor v. Momčilo Krajišnik*	27 September 2006	7 April 2000	1	450
IT-95-11-T	*Prosecutor v. Milan Martić*	12 June 2007	21 May 2002	1	200
IT-95-13/1-T	*Prosecutor v. Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin* or *Mrkšić et al.*	27 September 2007	16 May 2002 Mile Mrkšić 21 May 2003 Miroslav Radic 3 July 2003 Veselin Šljivančanin	3	331
IT-98-29/1-T	*Prosecutor v. Dragomir Milošević*	12 December 2007	7 December 2004	1	337
IT-04-84-T	*Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj* or *Haradinaj et al.*	3 April 2008	14 March 2005	3	294
IT-04-82-T	*Prosecutor v. Ljube Boškoski and Johan Tarčulovski*	10 July 2008	1 April 2005 Ljube Boškoski 21 March 2005 Johan Tarčulovski	2	267
IT-04-83-T	*Prosecutor v. Rasim Delić*	15 September 2008	3 March 2005	1	207
IT-05-87-T	*Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić* or *Milutinović et al.*	26 February 2009	26 April 2002 Dragoljub Ojdanić 3 May 2002 Nikola Šainovic 27 January 2005 Milan Milutinović 7 February 2003 Vladimir Lazarevic 6 April 2005 Sreten Lukic 28 April 2005 Nebojša Pavković	6	Volume 1: 482 Volume 2: 473 Volume 3: 481 Volume 4: 307 Total: 1 743
IT-98-32/1-T	*Prosecutor v. Milan Lukić and Sredoje Lukić*	20 July 2009	24 February 2006 Milan Lukić 20 September 2005 Sredoje Lukić	2	360

Case number	*Case name*	*Date*	*Date of initial appearance*	*Number of accused*	*Number of pages[a]*
IT-05-88-T	*Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero and Vinko Pandurević* or *Popović et al.*	10 June 2010	4 April 2006 Vujadin Popović, Ljubiša Beara, Drago Nikolić, Vinko Pandurević and Ljubomir Borovčanin 6 July 2006 Radivoje Miletić and Milan Gvero	7	882
IT-05-87/1-T	*Prosecutor v. Vlastimir Đorđević*	23 February 2011	16 July 2007	1	979
IT-06-90-T	*Prosecutor v. Ante Gotovina, Ivan Čermak and Mladen Markač* or *Gotovina et al.*	15 April 2011	12 March 2004 Ivan Čermak and Mladen Markač 12 December 2005 Ante Gotovina	3	Volume 1: 794 Volume 2: 584 Total: 1 378
IT-04-81-T	*Prosecutor v. Momčilo Perišić*	6 September 2011	9 March 2005	1	644
IT-04-84 bis-T	*Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj* or *Haradinaj et al.*	29 November 2012	14 March 2005	3	269
IT-05-88/2-T	*Prosecutor v. Zdravko Tolimir*	12 December 2012	4 June 2007	1	595
IT-08-91-T	*Prosecutor v. Mićo Stanišić and Stojan Župljanin*	27 March 2013	17 March 2005 Mićo Stanišić 23 June 2008 Stojan Župljanin	2	Volume 1: 535 Volume 2: 319 Volume 3: 636 Total: 1 490
IT-04-74-T	*Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić* or *Prlić et al.*	29 May 2013	6 April 2004	6	Volume 1: 379 Volume 2: 599 Volume 3: 519 Volume 4: 440 Volume 5: 114 Volume 6: 493 Total: 2 544
IT-03-69-T	*Prosecutor v. Jovica Stanišić and Franko Simatović*	30 May 2013	2 June 2003 Franko Simatović 13 June 2003 Jovica Stanišić	2	Volume 1: 437 Volume 2: 452 Total: 889
IT-95-5/18-T	*Prosecutor v. Radovan Karadžić*	24 March 2016	31 July 2008	1	2 615
IT-03-67-T	*Prosecutor v. Vojislav Šešelj*	31 March 2016	26 February 2003	1	143
IT-09-92-T	*Prosecutor v. Ratko Mladić*	22 November 2017	3 June 2011	1	Volume 1: 520 Volume 2: 617 Volume 3: 671 Volume 4: 718 Total: 2 526

[a] English version.

Enclosure VII

Rule 98 bis judgments

Case number	*Case name*	*Date*	*Type of judgment*	*Number of accused*	*Number of pages*
IT-95-14-T	*Prosecutor v. Tihomir Blaškić*	3 September 1998	Written	1	6
IT-95-16-T	*Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Šantić*	8 January 1999	Written	6	3
IT-95-10-T	*Prosecutor v. Goran Jelisić*	19 October 1999	Oral	1	
IT-95-14/2-T	*Prosecutor v. Dario Kordić and Mario Čerkez*	6 April 2000	Written	2	13
IT-96-23-T IT-96-23/1-T	*Prosecutor v. Dragoljub Kunarac, Radomir Kovać and Zoran Vuković*	3 July 2000	Written	3	13
IT-98-30/1-T	*Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać*	15 December 2000	Written	5	19
IT-98-34-T	*Prosecutor v. Mladen Naletilić and Vinko Martinović*	28 February 2002	Written	2	9
IT-98-29-T	*Prosecutor v. Stanislav Galić*	3 October 2002	Written	1	15
IT-95-9-T	*Prosecutor v. Blagoje Simić, Miroslav Tadić and Simo Zarić*	9 October 2002	Oral	3	6
IT-97-24-T	*Prosecutor v. Milomir Stakić*	31 October 2002	Written	1	57
IT-99-36-T	*Prosecutor v. Radoslav Brđanin*	28 November 2003	Written	1	32
IT-02-60-T	*Prosecutor v. Vidoje Blagojević and Dragan Jokić*	5 April 2004	Written	2	24
IT-02-54-T	*Prosecutor v. Slobodan Milošević*	16 June 2004	Written	1	136
IT-01-42-T	*Prosecutor v. Pavle Strugar*	21 June 2004	Written	1	32
IT-01-47-T	*Prosecutor v. Enver Hadžihasanović and Amir Kubura*	27 September 2004	Written	2	55
IT-03-68-T	*Prosecutor v. Naser Orić*	8 June 2005	Oral	1	52
IT-00-39-T	*Prosecutor v. Momčilo Krajišnik*	19 August 2005	Oral	1	22
IT-95-13/1-T	*Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*	28 June 2006	Oral	2	15
IT-95-11-T	*Prosecutor v. Milan Martić*	3 July 2006	Oral	1	14
IT-98-29-1-T	*Prosecutor v. Dragomir Milošević*	3 May 2007	Oral	1	11
IT-05-87-T	*Prosecutor v. Milutinović et al.*	18 May 2007	Oral	6	38
IT-04-74-T	*Prosecutor v. Prlić et al.*	20 February 2008	Oral	6	39
IT-04-83-T	*Prosecutor v. Rasim Delić*	26 February 2008	Oral	1	4
IT-05-88-T	*Prosecutor v. Popović et al.*	3 March 2008	Oral	7	15
IT-98-32/1-T	*Prosecutor v. Milan Lukić and Sredoje Lukić*	13 November 2008	Oral	2	15
IT-06-90-T	*Prosecutor v. Ante Gotovina, Ivan Čermak and Mladen Markač*	3 April 2009	Oral	3	30
IT-03-67-T	*Prosecutor v. Vojislav Šešelj*	4 May 2011	Oral	1	61
IT-03-69-T	*Prosecutor v. Jovica Stanišić & Franko Simatović*	5 May 2011	Oral	2	25
IT-95-5/18-T	*Prosecutor v. Radovan Karadžić*	28 June 2012	Oral	1	45
IT-09-92-T	*Prosecutor v. Ratko Mladić*	15 April 2014	Oral	1	38

Enclosure VIII

Sentencing judgments

Case number	*Case name*	*Date*	*Type of judgment*	*Number of accused*	*Number of pages*
IT-96-22-T	*Prosecutor v. Dražen Erdemović*	29 November 1996	Trial	1	25
IT-94-1-T	*Prosecutor v. Duško Tadić*	14 July 1997	Trial	1	41
IT-96-22-T bis	*Prosecutor v. Dražen Erdemović*	5 March 1998	Trial	1	24
IT-94-1-T bis-R117	*Prosecutor v. Duško Tadić*	11 November 1999	Trial	1	18
IT-94-1-A and IT-94-1-A bis	*Prosecutor v. Duško Tadić*	26 January 2000	Appeal	1	57
IT-95-9/1-S	*Prosecutor v. Stevan Todorović*	31 July 2001	Trial	1	37
IT-96-21-T bis-R117	*Prosecutor v. Zdravko Mucić, Hazim Delić and Esad Landžo* or *Mucić et al.*	9 October 2001	Trial	3	21
IT-95-8-S	*Prosecutor v. Duško Sikirica, Damir Došen and Dragan Kolundžija* or *Sikirica et al.*	13 November 2001	Trial	3	70
IT-95-9/2-S	*Prosecutor v. Milan Simić*	17 October 2002	Trial	1	40
IT-00-39 and 40/1-S	*Prosecutor v. Biljana Plavšić*	27 February 2003	Trial	1	44
IT-96-21-A bis	*Prosecutor v. Zdravko Mucić, Hazim Delić and Esad Landžo* or *Mucić et al.*	8 April 2003	Appeal	3	38
IT-02-65/1-S	*Prosecutor v. Predrag Banović*	28 October 2003	Trial	1	34
IT-02-60/1-S	*Prosecutor v. Momir Nikolić*	2 December 2003	Trial	1	65
IT-02-60/2-S	*Prosecutor v. Dragan Obrenović*	10 December 2003	Trial	1	55
IT-94-2-S	*Prosecutor v. Dragan Nikolić*	18 December 2003	Trial	1	127
IT-95-10/1-S	*Prosecutor v. Ranko Češić*	11 March 2004	Trial	1	35
IT-01-42/1-S	*Prosecutor v. Miodrag Jokić*	18 March 2004	Trial	1	35
IT-02-61-S	*Prosecutor v. Miroslav Deronjić*	30 March 2004	Trial	1	105
IT-02-59-S	*Prosecutor v. Darko Mrđa*	31 March 2004	Trial	1	35
IT-03-72-S	*Prosecutor v. Milan Babić*	29 June 2004	Trial	1	35
IT-94-2-A	*Prosecutor v. Dragan Nikolić*	4 February 2005	Appeal	1	61
IT-03-72-A	*Prosecutor v. Milan Babić*	18 July 2005	Appeal	1	60
IT-02-61-A	*Prosecutor v. Deronjić*	20 July 2005	Appeal	1	64
IT-01-42/1-A	*Prosecutor v. Miodrag Jokić*	30 August 2005	Appeal	1	42
IT-95-17-S	*Prosecutor v. Miroslav Bralo*	7 December 2005	Trial	1	35
IT-02-60/1-A	*Prosecutor v. Momir Nikolić*	8 March 2006	Appeal	1	56
IT-95-12-S	*Prosecutor v. Ivica Rajić*	8 May 2006	Trial	1	46
IT-95-17-A	*Prosecutor v. Miroslav Bralo*	2 April 2007	Appeal	1	58
IT-96-23/2-S	*Prosecutor v. Dragan Zelenović*	4 April 2007	Trial	1	29
IT-96-23/2-A	*Prosecutor v. Dragan Zelenović*	31 October 2007	Appeal	1	22

Enclosure IX

Contempt judgments

Case number	*Case name*	*Date of judgment final decision*	*Related proceedings*	*Number of accused*	*Number of pages*
IT-95-14/1-T	*Prosecutor v. Anto Nobilo*	11 December 1998	*Aleksovski*	1	–
IT-94-1-A-R77	*Prosecutor v. Milan Vujin*	31 January 2000	*Duško Tadić*	1	60
IT-95-9-R77	*Prosecutor v. Branislav Ivramović and Milan Simić*	30 June 2000	*Simić et al.*	2	35
IT-94-1-A-AR77	*Prosecutor v. Milan Vujin*	27 February 2001	*Duško Tadić*	1	8
IT-95-14/1-AR77	*Prosecutor v. Anto Nobilo*	30 May 2001	*Aleksovski*	1	25
IT-99-36-R77	*Prosecutor v. Milka Maglov*	17 December 2004	*Brđanin*	1	2
IT-02-54-R.77.4	*Prosecutor v. Kosta Bulatović*	13 May 2005	*Slobodan Milošević*	1	15
IT-03-66-I-R77	*Prosecutor v. Beqa Beqaj*	27 May 2005	*Limaj et al.*	1	28
IT-95-14-R77.2	*Prosecutor v. Ivica Marijačić and Markica Rebić*	10 March 2006	*Blaškić*	2	22
IT-95-14 and IT-95-14/2-R77	*Prosecutor v. Josip Jović*	30 August 2006	*Blaškić*	1	20
IT-95-14-R77.2-A	*Prosecutor v. Ivica Marijačić and Markica Rebić*	27 September 2006	*Blaškić*	2	18
IT-95-14-R77.6	*Prosecutor v. Domagoj Margetić*	07 February 2007	*Blaškić*	1	27
IT-95-14 and 14/2-R77-A	*Prosecutor v. Josip Jović*	15 March 2007	*Blaškić*	1	16
IT-04-84-R77.5	*Prosecutor v. Ratom Haxhiu*	24 July 2008	*Haradinaj et al.*	1	18
IT-03-67-R77.1	*Prosecutor v. Ljubiša Petković*	11 September 2008	*Šešelj*	1	21
IT-04-84-R77.4	*Prosecutor v. Astrit Haraqija and Bajrush Morina*	17 December 2008	*Haradinaj et al.*	2	37
IT-05-88-R77.1	*Prosecutor v. Dragan Jokić*	27 March 2009	*Popović et al.*	1	16
IT-05-88-R77.1-A	*Prosecutor v. Dragan Jokić*	25 June 2009	*Popović et al.*	1	17
IT-04-84-R77.4-A	*Prosecutor v. Astrit Haraqija and Bajrush Morina*	23 July 2009	*Haradinaj et al.*	2	29
IT-03-67-R77.2	*Prosecutor v. Vojislav Šešelj*	24 July 2009	*Šešelj*	1	13
IT-02-54-R77.5	*Prosecutor v. Florence Hartmann*	14 September 2009	*Slobodan Milošević*	1	33
IT-98-32/1-R.77.1	*Prosecutor v. Zuhdija Ibišević*	18 March 2010	*Lukić and Lukić*	1	7
IT-03-67-R77.2-A	*Prosecutor v. Vojislav Šešelj*	19 May 2010	*Šešelj*	1	18
IT-02-54-R77.5-A	*Prosecutor v. Florence Hartmann*	19 July 2011	*Slobodan Milošević*	1	59
IT-04-84-R77.1	*Prosecutor v. Shefqet Kabashi*	16 September 2011	*Haradinaj et al.*	1	9
IT-03-67-R77.3	*Prosecutor v. Vojislav Šešelj*	31 October 2011	*Šešelj*	1	26
IT-05-88/2-R77.2	*Prosecutor v. Dragomir Pečanac*	9 December 2001	*Tolimir*	1	20
IT-95-5/18-R77.2	*Prosecutor v. Milan Tupajić*	24 February 2012	*Karadžić*	1	11
IT-98-32/1-R77.2	*Prosecutor v. Jelena Rašić*	6 March 2012	*Lukić and Lukić*	1	12
IT-03-67-R77.4	*Prosecutor v. Vojislav Šešelj*	28 June 2012	*Šešelj*	1	24
IT-98-32/1-R77.2-A	*Prosecutor v. Jelena Rašić*	16 November 2012	*Lukić and Lukić*	1	33
IT-03-67-R77.3-A	*Prosecutor v. Vojislav Šešelj*	28 November 2012	*Šešelj*	1	15
IT-03-67-R77.4-A	*Prosecutor v. Vojislav Šešelj*	30 May 2013	*Šešelj*	1	25
IT-95-5/18-R77.3	*Prosecutor v. Radislav Krstić*	18 July 2013	*Karadžić*	1	12
IT-95-5/18-R77.1	*Prosecutor v. Berko Ičetović*	25 February 2011	*Karadžić*	1	2

Enclosure X

Appeal judgments

Case number	*Case name*	*Date*	*Number of accused*	*Number of pages*
IT-96-22-A	*Prosecutor v. Dražen Erdemović*	7 October 1997	1	18
IT-94-1-A	*Prosecutor v. Duško Tadić*	15 July 1999	1	177
IT-95-14/1-A	*Prosecutor v. Zlatko Aleksovski*	24 March 2000	1	87
IT-95-17/1-A	*Prosecutor v. Anto Furundžija*	21 July 2000	1	106
IT-96-21-A	*Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo* or *Mucić et al.* (Čelebići case)	20 February 2001	4	364
IT-95-10-A	*Prosecutor v. Goran Jelisić*	5 July 2001	1	77
IT-95-16-A	*Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović and Vladimir Šantić* or *Kupreškić et al.*	23 October 2001	5	209
IT-96-23 and IT-96-23-A/1	*Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković* or *Kunarac et al.*	12 June 2002	3	144
IT-97-25-A	*Prosecutor v. Milorad Krnojelac*	17 September 2003	1	135
IT-98-32-A	*Prosecutor v. Mitar Vasiljević*	25 February 2004	1	91
IT-98-33-A	*Prosecutor v. Radislav Krstić*	19 April 2004	1	136
IT-95-14-A	*Prosecutor v. Tihomir Blaškić*	29 July 2004	1	301
IT-95-14/2-A	*Prosecutor v. Dario Kordić and Mario Čerkez*	17 December 2004	2	328
IT-98-30/1-A	*Prosecutor v. Miroslav Kvočka, Mlado Radić, Zoran Žigić and Dragoljub Prcać* or *Kvočka et al.*	28 February 2005	4	303
IT-97-24-A	*Prosecutor v. Milomir Stakić*	22 March 2006	1	195
IT-98-34-A	*Prosecutor v. Mladen Naletilić and Vinko Martinović*	3 May 2006	2	250
IT-95-9-A	*Prosecutor v. Blagoje Simić* (formerly *Simić et al.*)	28 November 2006	1	158
IT-98-29-A	*Prosecutor v. Stanislav Galić*	30 November 2006	1	247
IT-99-36-A	*Prosecutor v. Radoslav Brđanin*	3 April 2007	1	201
IT-02-60-A	*Prosecutor v. Vidoje Blagojević and Dragan Jokić*	9 May 2007	2	165
IT-03-66-A	*Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu* or *Limaj et al.*	27 September 2007	3	136
IT-01-48-A	*Prosecutor v. Sefer Halilović*	16 October 2007	1	116
IT-01-47-A	*Prosecutor v. Enver Hadžihasanović and Amir Kubura*	22 April 2008	2	153
IT-03-68-A	*Prosecutor v. Naser Orić*	3 July 2008	1	108
IT-01-42-A	*Prosecutor v. Pavle Strugar*	17 July 2008	1	190
IT-95-11-A	*Prosecutor v. Milan Martić*	8 October 2008	1	154
IT-00-39-A	*Prosecutor v. Momčilo Krajišnik*	17 March 2009	1	338

Case number	*Case name*	*Date*	*Number of accused*	*Number of pages*
IT-95-13/1-A	*Prosecutor v. Mile Mrkšić and Veselin Šljivančanin* or *Mrkšić et al.*	5 May 2009	2	202
IT-98-29/1-A	*Prosecutor v. Dragomir Milošević*	12 November 2009	1	178
IT-04-82-A	*Prosecutor v. Ljube Boškoski and Johan Tarčulovski*	19 May 2010	2	125
IT-04-84-A	*Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj* or *Haradinaj et al.*	19 July 2010	3	152
IT-06-90-A	*Prosecutor v. Ante Gotovina and Mladen Markač*	16 November 2012	2	139
IT-98-32/1-A	*Prosecutor v. Milan Lukić and Sredoje Lukić*	4 December 2012	2	292
IT-04-81-A	*Prosecutor v. Momčilo Perišić*	28 February 2013	1	77
IT-95-5/18-AR98 bis.1	*Prosecutor v. Radovan Karadžić*	11 July 2013	1	57
IT-05-87-A	*Prosecutor v. Nikola Šainović, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić* or *Šainović et al.* (formerly *Milutinović et al.*)	23 January 2014	4	824
IT-05-87/1-A	*Prosecutor v. Vlastimir Đorđević*	27 January 2014	1	444
IT-05-88-A	*Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Radivoje Miletić and Vinko Pandurević* or *Popović et al.*	30 January 2015	5	792
IT-05-88/2-A	*Prosecutor v. Zdravko Tolimir*	8 April 2015	1	446
IT-03-69-A	*Prosecutor v. Jovica Stanišić and Franko Simatović*	9 December 2015	2	101
IT-08-91-A	*Prosecutor v. Mićo Stanišić and Stojan Župljanin*	30 June 2016	2	570
IT-04-74-A	*Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić* or *Prlić et al.*	29 November 2017	6	1 578